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**Ordinance No. 2018-36, adopted December 12, 2018.**

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**Ordinance No. 2017-27, adopted December 13, 2017.**

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SUPPLEMENT NO. 17

BLACK HAWK MUNICIPAL CODE

Supplementation Instructions

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COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado

March 2013

* Please ensure that all indicated pages are removed.
SUPPLEMENT NO. 16

BLACK HAWK MUNICIPAL CODE

Supplementation Instructions

This supplement contains all ordinances deemed advisable to be included at this time through Ordinance No. 2012-3, adopted February 8, 2012.

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Fort Collins, Colorado

April 2012

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Filed by: __________________
Date: __________________
SUPPLEMENT NO. 15

BLACK HAWK MUNICIPAL CODE

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This supplement contains all ordinances deemed advisable to be included at this time through Ordinance No. 2010-14, adopted June 9, 2010.

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SUPPLEMENT NO. 14

BLACK HAWK MUNICIPAL CODE

Supplementation Instructions

This supplement contains all ordinances deemed advisable to be included at this time through Ordinance No. 2009-15, adopted April 22, 2009.

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COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado

July 2009

*Please ensure that all indicated pages are removed.
SUPPLEMENT NO. 13

BLACK HAWK MUNICIPAL CODE

Supplementation Instructions

This supplement contains all ordinances deemed advisable to be included at this time through Ordinance No. 2008-9, adopted March 26, 2008.

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado
August 2008

* Please ensure that all indicated pages are removed.

Filed by: __________________
Date: ________________
SUPPLEMENT NO. 12

BLACK HAWK MUNICIPAL CODE

Supplementation Instructions

This supplement contains all ordinances deemed advisable to be included at this time through Ordinance No. 2007-1, adopted January 10, 2007.

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado
March 2007
SUPPLEMENT NO. 11

BLACK HAWK MUNICIPAL CODE

Supplementation Instructions

This supplement contains all ordinances deemed advisable to be included at this time through Ordinance No. 2006-4, adopted March 8, 2006.

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY

Fort Collins, Colorado
April 2006
SUPPLEMENT NO. 10

BLACK HAWK MUNICIPAL CODE

Supplementation Instructions

This supplement contains all ordinances deemed advisable to be included at this time through Ordinance No. 2004-12, adopted March 10, 2004.

The Black Hawk Municipal Code has been reprinted in its entirety, which includes Supplement No. 10. The entire contents are being replaced, except for the protecting cover sheet, blue back sheet and all tabs, which will be saved and inserted with the new pages. Please follow the instructions below. DO NOT REMOVE THE TABBED DIVIDERS OR PROTECTING SHEETS.

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado
December 2004

Filed by: ___________________
Date: ___________________
SUPPLEMENT NO. 9

BLACK HAWK MUNICIPAL CODE

Supplementation Instructions

This supplement contains all ordinances deemed advisable to be included at this time through Ordinance No. 2002-31, adopted July 10, 2002.

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COLORADO CODE PUBLISHING COMPANY

Fort Collins, Colorado

July 2002
SUPPLEMENT NO. 8

BLACK HAWK MUNICIPAL CODE

Supplementation Instructions

This supplement contains all ordinances deemed advisable to be included at this time through Ordinance No. 2002-30, adopted June 12, 2002.

The Black Hawk Municipal Code has been reprinted in its entirety, which includes Supplement No. 8. The entire contents are being replaced, except for the protecting cover sheet, blue back sheet and all tabs, which will be saved and inserted with the new pages. Please follow the instructions below. DO NOT REMOVE THE TABBED DIVIDERS OR PROTECTING SHEETS.

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COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado
June 2002
These Supplementation Instructions are provided for informational purposes only. The contents of the entire Code were replaced during reprinting, and Supplement No. 7 has been incorporated into the reprinting of the Code. This supplement is not to be supplemented into preexisting work.

This Supplement contains all ordinances deemed advisable to be included at this time through Ordinance No. 2000-23, adopted October 25, 2000.

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Supplementation Instructions (cont’d)

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado
April 2001
SUPPLEMENT NO. 6

BLACK HAWK MUNICIPAL CODE
Supplementation Instructions

These Supplementation Instructions are provided for informational purposes only. The contents of the entire Code were replaced during reprinting, and Supplement No. 6 has been incorporated into the reprinting of the Code. Therefore, page numbering may vary between these Instructions and the updated Code. This supplement is not to be supplemented into preexisting work.

This Supplement contains all ordinances deemed advisable to be included at this time through Ordinance No. 98-63, adopted December 16, 1998, and also including Ordinance No. 99-5, adopted February 10, 1999.

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado

February 1999
SUPPLEMENT NO. 5

BLACK HAWK MUNICIPAL CODE
Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through Ordinance No. 97-47, adopted December 29, 1997.

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado
April 1998

* Please ensure that all indicated pages are removed.

Filed by: __________________
Date: ___________________
SUPPLEMENT NO. 4

BLACK HAWK MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through Ordinance No. 96-42, adopted December 11, 1996.

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado
June 1997
This Supplement contains all ordinances deemed advisable to be included at this time through Ordinance No. 96-42, adopted December 11, 1996.

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado
March 1997
SUPPLEMENT NO. 2
BLACK HAWK
MUNICIPAL CODE
Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through Ordinance No. 95-7, adopted June 28, 1995.

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado
August 1995
SUPPLEMENT NO. 1

BLACK HAWK

MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through Ordinance No. 94-18, adopted August 10, 1994.

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado

September 1994
OFFICIALS
of the
CITY OF BLACK HAWK

Mayor
David D. Spellman

Board of Aldermen
Linda Armbright
Paul Bennett
Jim Johnson
Hal Midcap
Greg Moates
Benito Torres

City Manager
Stephen N. Cole

City Clerk
Melissa A. Greiner

City Attorney
Corey Y. Hoffmann
SUPPLEMENTATION


Supplements to this Code provide periodic updating through the removal and replacement of pages. This inter-leaf supplementation system requires that each page which is to be removed and replaced is identified so that the updating may be accurately accomplished and historically maintained.

Instructions for supplementation are provided for each supplement, identified by Supplement number, date and inclusive ordinance numbers. The Instructions for posting the removal and replacement of pages must be followed and accomplished in sequence, with the most recent supplementation posted last.

When supplementation is completed and the removal and replacement of all pages are accomplished, the Instructions should be placed under the Supplementation tab, behind this page, with the most recent Instruction sheet on top. Previous Instructions should not be removed, so that the user may refer to this tab section to verify whether the code book is fully updated with all supplements included.

The maintenance of a Municipal Code with all supplementation is an important activity which deserves close attention so that the value of the code is maintained as a fully comprehensive compilation of the legislative ordinances of the municipality.

AMENDMENTS

Amendments may be made to the Code by additions, revisions or deletions therefrom. Those changes may be made as follows:

Additions: Additions may be made by ordinance to the Code as follows:

The "City of Black Hawk Municipal Code" is amended by the addition thereto of a new Section 2-121, which is to read as follows:

(Set out full section number, title and contents)

or if the location of the new section number or numbers is undetermined, the Code may be amended as follows:

The "City of Black Hawk Municipal Code" is amended by the addition of the following:

(Set out section title and contents)
Revisions: A revision of the Code may be accomplished as follows:

Section 2-121 of the "City of Black Hawk Municipal Code" is repealed in its entirety and readopted to read as follows:

(Set out section number, title and entire contents of the readopted code section)

or as follows:

Section 2-121 of the "City of Black Hawk Municipal Code" is amended to read as follows:

(Set out section number, title and entire contents of the amended code section)

Repeal: Sections, articles and chapters may be repealed as follows:

Section 2-121 of the "City of Black Hawk Municipal Code" is repealed in its entirety.
CITY OF BLACK HAWK

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SUPPLEMENT HISTORY TABLE

The table below allows users of this Code to quickly and accurately determine what ordinances have been considered for codification in each supplement. Ordinances that are of a general and permanent nature are codified in the Code Book and are considered "Includes." Ordinances that are not of a general and permanent nature are not codified in the Code Book and are considered "Omits."

In addition, by adding to this table with each supplement, users of this Code of Ordinances will be able to gain a more complete picture of the Code's historical evolution.

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HOME RULE CHARTER

for the

CITY OF BLACK HAWK, COLORADO

January 16, 2001

Prepared by the City of Black Hawk Home Rule Commission

Vikki A. Burk, Richard W. Cottrell, Chris A. Dickey, Donald E. Doles, Rob Dutcher, Jerry Floyd, Sharon Roth Floyd, Nolan W. Jones and William D. Spellman

Beginning with Supp. No. 18,
Supplemented by Municipal Code Corporation
HOME RULE CHARTER

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HOME RULE CHARTER

OF THE

CITY OF BLACK HAWK

ARTICLE I

General Provisions

Section 1. Creation.

On March 11, 1864, the City of Black Hawk, Gilpin County, Territory of Colorado, consisting of the inhabitants of the designated city boundary, was created by the passage of an Act by the Council and House of Representatives of Colorado Territory. The City of Black Hawk has functioned as a Territorial Charter City since 1864 pursuant to said Charter, as subsequently amended by the Council and House of Representatives of Colorado Territory and the General Assembly of the State of Colorado, and as provided by Section 31-1-202, Colorado Revised Statutes. On January 16, 2001, the citizens of the City of Black Hawk voted to approve this Home Rule Charter for the City of Black Hawk.

With all good faith in the citizens and the future of the City of Black Hawk, the nine Charter Commission members, elected by the people, have drafted this Home Rule Charter ("Charter") in conformity with Article XX of the Constitution of the State of Colorado and the Municipal Home Rule Act of 1971.

The Charter reflects the Commission's philosophy that the City belongs to the citizens thereof, not the state or federal government, and as such follows the American doctrine where the electors control the government rather than the government dictating to the citizens.

This document defines a form of government that is determined by the City Council by Ordinance. The Mayor and Council are elected every four (4) years on a rotating basis to ensure continuity of government. The Council is charged with the legislative responsibilities of policy making. The administration of these policies is determined in the manner provided by ordinance. The Mayor presides at Council meetings and is the chief executive officer of the City.

The democratic techniques of initiative and referendum and recall have been included in the Charter. These provisions provide the means by which the people can, if necessary, directly control the policies of their city government, enact or reject legislation as they see fit, and rid themselves of an elected official who fails to perform his duties properly. In addition, other safeguards have been included in the Charter to prevent abuse of any office in the City.

The members of the Charter Commission viewed their task as one of great responsibility. The Commission did not limit the goals for the city government of Black Hawk to a consideration of the present, but extensively considered the future needs of the City and envisioned continued growth and progress for the City.

In their effort to submit the best possible Charter to the people of Black Hawk, the Charter Commission studied the Charters of other Colorado cities and invited suggestions and advice from the citizens of Black Hawk in preparing the Home Rule Charter for the City of Black Hawk.

This Charter provides a simple, direct and responsible form of local government.

Section 2. Name, powers and interpretation.

The Territorial Charter City heretofore existing as the City of Black Hawk, Gilpin County, State of Colorado, shall remain and continue a body politic and corporate under this Home Rule Charter and shall be known as the City of Black Hawk. If there is a conflict between statutes governing municipalities generally and this Home Rule Charter, this Charter shall control.
Section 3. Boundaries.

The boundaries of the City of Black Hawk shall be the existing and presently established boundaries, as such boundaries may be amended in the future in accordance with Colorado law, which includes, but is not limited to annexation or by amendment of this Charter.

Section 4. Specific powers.

The City shall have all the power of the local self-government and home rule and all power possible for a municipality to have under the Constitution and laws of the State of Colorado. The enumeration of particular powers under this Charter is not exclusive of others. By the name of the City of Black Hawk, a municipal corporation, the City shall have perpetual succession; shall own, possess and hold all property, real and personal heretofore owned, possessed and held by the City, and does assume and shall manage and dispose of all trusts in any way connected therewith; shall succeed to all the rights and liabilities of the City; shall acquire all benefits and does assume and shall pay all bonds, obligations and indebtedness of the City; may sue and defend; may purchase, lease, receive, hold and enjoy, or sell and dispose of real and personal properties; may establish municipal water works, sewage disposal works, and water and sewer systems; shall have a common seal and alter the same at pleasure and to have all rights, powers, and liabilities applicable to Colorado home rule municipal corporations as set forth in Article XX of the Colorado Constitution and Title 31, Colorado Revised Statutes, as the same now exist or as they may either hereafter be amended.

All powers of the City shall be exercised as provided in this Charter, as provided by ordinance adopted by the City Council which does not conflict with this Charter, as provided by state statute which is not in conflict with this Charter, or as provided by an ordinance adopted in accordance with this Charter.

Section 5. Form of government.

The City of Black Hawk shall operate by a Council-Manager form of government as provided by ordinance. All powers of the City shall be vested in an elected City Council, which shall enact local legislation, adopt budgets, determine policies and appoint City officers, including, but not limited to the City Manager, the City Attorney and the Municipal Judge. The City Manager shall execute the laws and administer the City government as provided by ordinance adopted by the City Council.

Section 6. Recall.

The Mayor or any Alderman who has served at least six months of such Alderman's term of office may be recalled by the registered electors of the City in accordance with Article XXI of the Colorado Constitution. The Council may adopt procedures by ordinance for the exercise of the right to recall. The statutory procedures for exercise of the right to recall are hereby adopted; except that such procedures may be superseded or supplemented by ordinance adopted by the Council. A petition for recall must contain the signatures of registered electors equal to twenty-five percent of the entire vote cast at the last preceding election for all candidates for office which the incumbent sought to be recalled occupies; provided, if the incumbent has been subject to a recall petition and election during the incumbent's present term, no further recall petition shall be filed against the same officer during the term unless the recall petition contains the signatures of registered electors equal to fifty percent of the votes cast at the last preceding election for all of the candidates for the office held by the incumbent.
ARTICLE II

City Council

Section 1. City Council.

There shall be a City Council, to consist of a Mayor and Board of Aldermen, who shall be nominated and elected at large. The City Council may, by ordinance and approval by the electors of the City, divide the City into wards, alter the boundaries thereof, and erect additional wards as the occasion may require.

Section 2. Mayor.

The Mayor shall be the chief executive officer of the City as defined by ordinance, shall preside at all meetings of the City Council, and shall exercise such powers and perform such other duties as are or may be conferred and imposed upon the Mayor by this Charter, by ordinance or by other applicable law. The Mayor shall be recognized as the head of the City government for all ceremonial and legal purposes and shall execute and authenticate legal instruments requiring the Mayor's signature as such official. The Mayor shall have all of the powers, rights and privileges of an Alderman; except that the Mayor shall not vote except in the case of a tie vote. In case of non-attendance of the Mayor at any meeting, the Board of Aldermen shall appoint one of their own members as chairperson, who shall preside at the meeting and shall not thereby lose the right to vote on any question before the Board. The Mayor shall, from time to time, communicate to the Aldermen information and recommend all such measures as, in the Mayor's opinion, may tend to the improvement of the finances, police, health, security, comfort and ornament of the City.

Section 3. Number of Aldermen.

The Board of Aldermen shall consist of six members.

Section 4. Qualifications.

No person shall be eligible for City Council unless at the time of election such person has resided within the City one year immediately preceding such election, is a registered elector, and is a citizen of the United States. No person shall be eligible for the office of Mayor unless at the time of election or appointment such person is at least twenty-five years of age. For purposes of this Section 4 and declaring a vacancy in the office of Mayor or Alderman or on any other board or commission of the City, residency shall mean the primary permanent domicile of a person as determined by the Board of Aldermen. The primary permanent domicile may be determined from activities of a person to establish domicile as evidenced by the residence at which such person spends a majority of the year, the location and use of other residences used by such person, the address used by such person for identification, car registration, driver's license, state and federal tax returns, regular mail and any other factors which the Board determines indicate such person's primary permanent domicile.

Section 5. Compensation.

Notwithstanding the provisions of Section 31-4-405, Colorado Revised Statutes, the emoluments of any member of the City Council, including the Mayor and Board of Aldermen, shall not be increased or diminished during the term for which he was elected or appointed, except by a majority vote of the registered electors of the City of Black Hawk. (Amended July 10, 2001 election)

Section 6. Quorum.

A majority of the City Council shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members under such penalties as may be prescribed by ordinance. A majority shall be four members of the City Council.
Section 7. Rules of procedure.

The City Council shall have the power to determine the rules of its proceedings, punish its members for disorderly conduct and, with the concurrence of two-thirds of the members elected, expel a member.

Section 8. Record of proceedings.

The City Council shall keep a written journal of its proceedings, and the yeas and nays, when demanded by any member present, shall be entered on the journal. It shall be the duty of the City Clerk to keep a true record of all the proceedings of the City Council, and such record shall be open in all business hours to the inspection of any citizen.

Section 9. Conflicts of interest.

(1) No member of the City Council, or other board or commission of the City with final decision-making authority shall be appointed to any office under the authority of the City, which shall have been created, or the emoluments of which shall have been increased during the time for which such member shall have been elected, except as provided in Article II, Section 5 of this Charter.

(2) No member of the Council, or other board or commission of the City shall be a compensated employee of the City under any of the categories of employment specified in the City of Black Hawk Personnel Manual, nor shall such member have any financial interest or substantial personal interest, direct or indirect, or any apparent conflict of interest with the City. In the event that any member of the Council, or any board or commission, or any person belonging to such member's family has or could potentially be construed as having a conflict of interest, such member shall declare such interest prior to participating in any discussion or voting on the issue or as soon thereafter as the interest accrues. If any member of the Council, or board or commission fails to declare such interest, upon discovery of such interest, the remaining members of the Council, or board or commission shall determine whether said interest does in fact constitute a conflict of interest. If such conflict is established, the remaining members of the Council, board or commission shall take any prospective or retroactive action they deem to be in the best interest of the City, including prohibiting that person from voting on or participating in an issue. (Amended July 10, 2001 election)

Section 10. Oath of office.

The Mayor and each Alderman, before entering upon the duties of office, shall take and subscribe an oath, or make an affirmation that they will support and defend the Constitutions of the United States and the State of Colorado and the laws of the City, and will well and truly perform the duties of their office according to the best of their understanding, knowledge and ability.

Section 11. Meetings.

There shall be at least twelve stated meetings of the Council in each year, at such times and places as may be prescribed by the City Council. The City Council may set such other meetings as they deem appropriate. The Mayor or any two Aldermen may call special meetings of the City Council upon forty-eight hours' notice to all members of the Council. In the event of an emergency, a special meeting may be called with less than twenty-four hours' notice; except that any action taken at such emergency meeting shall be ratified at a regular or special meeting of the Council within thirty days, or such emergency action shall be null and void. All meetings, except executive sessions as defined by ordinance, shall be open to the public.
Section 12. Terms of office.

The Mayor and the Board of Aldermen serve for four-year terms which commenced at the regular biennial election in 1994. The terms for the Aldermen are staggered so that at each election which followed the biennial election in 1994, one-half of the Board members were elected to four-year terms at each election. To commence the staggering of terms, at the biennial election in 1994, the Board of Aldermen were voted on and the three candidates, receiving the highest number of votes were elected to four-year terms and the remaining members receiving the next highest number of votes were elected to two-year terms. At the biennial election in 1996, the successors to the Aldermen who received two-year terms in 1994 were elected to four-year terms. In the event that an Alderman or the Mayor has been appointed or elected at a special election to fill a vacancy, such Alderman's or the Mayor's successor shall be elected to a four-year term if the office vacated was to expire at the next regular biennial election and a two-year term if the term of the office vacated was to expire at the regular biennial election two years after the next regular biennial election. The Mayor and Aldermen shall hold office from the first meeting held at least ten days from the canvass of votes of the election at which the Mayor or Alderman was elected until a successor is elected or appointed and qualified.

Section 13. Vacancies - removal.

The Mayor and Aldermen shall hold their respective offices until the expiration of the terms for which they were respectively elected, and until their successors are elected and qualified. If any Alderman, after such Alderman's election, moves to a residence outside of the City, such Alderman's office shall be declared vacated. Any vacancies that may now or hereafter exist or occur in the offices of Mayor or Alderman shall be filled by the Board of Aldermen by a vote of a majority of the quorum, within sixty days of the vacancy. If such vacancy is not filled by appointment by the Council within said sixty days and a regular election is not scheduled within one hundred eighty days of the vacancy, a special election shall be called to fill the vacancy. A vacancy may be declared by Council if a member has not attended Council meetings or resided within the City for four months, and such absence is not excused by a majority of the remainder of the Council, or for any other reasons determined by ordinance. A vacancy filled by appointment or election shall be until the next regular biennial election.

Section 14. Officers.

The City Council shall have the power to appoint all officers, except such as are elected or otherwise provided for in this Charter, and provide for their duties and compensation. The officers shall include, but not be limited to, the City Manager and the City Attorney, both of whom shall serve at the pleasure of the Council, and a Municipal Judge, who shall be appointed for a two-year term.

Section 15. Form of ordinance.

The style of the ordinance shall be "BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLACK HAWK." An ordinance may be adopted at the same meeting at which it is introduced. Ordinances passed by the City Council shall be signed by the Mayor and attested by the City Clerk, and shall be published in some newspaper designated by ordinance, or posted in three public places in said City, and shall be effective upon publication or posting as aforesaid, except emergency ordinances which shall be effective within three days of passage by two-thirds of the Board of Aldermen present at the meeting at which such emergency ordinance is adopted.
Section 16. Codification of ordinances.

All ordinances of the City Council may be proven by the seal of the City, and when printed in book or pamphlet form and purporting to be printed and published by authority of the City, the same shall be received in evidence in all courts of law and equity without further proof.

ARTICLE III

Elections

Section 1. Dates of elections.

(1) The regular biennial elections of the City shall be held on the first Tuesday in April, in even-numbered years. Except for the issues specified in subsection (2) of this section, a special election may be called on any issue by resolution or ordinance of the Council at least forty-five days in advance of such election.

(2) Any election for a new tax, a tax rate increase, a valuation for assessment ratio increase for a property class, a mill levy increase from the previous year, a tax policy change directly causing a net tax revenue gain, approval of a multiple-fiscal year direct or indirect debt or other financial obligation without adequate cash reserves, approval of spending limit changes, and approval of emergency taxes, to the extent such issues are governed by Section 20 of Article X of the Colorado Constitution, shall be held at the regular biennial election of the City, the State general election on the first Tuesday in November of odd-numbered years, or such other times as authorized by Section 20 of Article X of the Colorado Constitution.

Section 2. Municipal election code adopted.

The Colorado Municipal Election Code of 1965, Article 10 of Title 31, Colorado Revised Statutes, is hereby adopted by reference and as the same may be hereafter amended, and shall apply to all elections within the City, except as otherwise provided in this Charter or as otherwise provided by ordinance adopted in accordance with this Charter.

Section 3. Election issues.

The City Council shall judge the qualifications and election of its own members and shall determine all contested elections under this Charter. Whenever there shall be a tie in the election of an Alderman, the judges of election shall certify the facts to the Mayor, who shall order a run-off election to be held within forty-five (45) days of the date the tie is so certified to the Mayor. When two or more persons shall have an equal number of votes for Mayor, the judges of election shall certify the same to the Board of Aldermen, who shall order a run-off election to be held within forty-five (45) days of the date the tie is so certified to the Board of Aldermen. (Ord. 2008-3 §1)

ARTICLE IV

Initiative and Referendum

Section 1. General authority.

(1) Initiative. The electors of the City shall have the power to propose any ordinance to the Council, in accordance with the provisions of this Article, except for ordinances relating to budget, capital program, appropriation of any revenues, levy of taxes or salaries of City officers or employees. In the event Council fails to adopt the proposed ordinance without any change in substance, such ordinance shall be submitted to the electors at a City election for their acceptance or rejection.
(2) Referendum. The electors of the City shall have the power to require reconsideration by the Council of any ordinance, and if the Council fails to repeal an ordinance so reconsidered, to approve or reject it at a City election, in accordance with the provisions of this Article. However, this power of referendum shall not extend to ordinances relating to the City's budget, capital program, appropriation of funds, special assessments, payment of an existing contractual obligation, calling of a special election, the salaries of City officers or employees, the authorization of any municipal borrowing requiring an election pursuant to this Charter or the Colorado Constitution and any ordinance necessary for the immediate preservation of the public health, safety and welfare, which ordinance states in a separate section the reason why it is necessary and the ordinance is approved by an affirmative vote of four (4) Aldermen.

(3) Referral by Council. The Council shall have the power on its own motion to submit any proposed ordinance or question of any nature to a vote of the electors at a regular or a special election, which shall be a referendum under Section 1 of Article V of the Colorado Constitution.

Section 2. Commencement of proceedings, petitioner's committee; affidavit.

(1) Any five electors may commence initiative proceedings by filing with the City Clerk an affidavit stating that they will constitute the petitioner's committee. Any five electors may commence referendum proceedings by filing with the City Clerk, no later than ten days after final adoption of the ordinance, an affidavit stating they will constitute the petitioner's committee. The affidavit shall provide:

(a) That the committee shall be responsible for circulating the petition and filing it in proper form;

(b) The names and addresses of the committee members and specify the address to which all notices to the committee are to be sent; and

(c) The full text of the proposed initiative ordinance or cite the ordinance sought to be reconsidered.

Section 3. Petitions.

(1) Number of signatures. Initiative petitions, on the date filed, must be signed by registered electors of the City in an amount equal to at least fifteen percent of the total number of electors registered to vote within the City thirty days prior to filing the petitioner's affidavit described in Section 2 of this Article. Referendum petitions, on the date filed, must be signed by registered electors of the City in an amount equal to at least ten percent of the total number of electors registered to vote within the City thirty days prior to filing the petitioner's affidavit described in Section 2 of this Article. The number of signatures required for initiative or referendum petitions may be reduced by ordinance.

(2) Form and content. All pages of a petition shall be uniform in style and shall be filed as one instrument. Each signature shall be executed in ink or indelible pencil and shall be followed by the printed name and address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.

(3) Affidavit of circulator. Each page of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating:

(a) That the affiant personally circulated the petition;

(b) The number of signatures thereon;
(c) That all signatures were affixed in the affiant's presence;

(d) That the affiant believes that each signature thereon is the signature of the person whose name it purports to be;

(e) That each signer is a registered elector of the City at the time they signed the petition; and

(f) That each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.

(4) Time for circulation. Initiative petitions with the required number of signatures must be filed with the City Clerk within one hundred eighty days of filing of the petitioner's committee affidavit. Referendum petitions with the required number of signatures must be filed with the City Clerk within thirty days of the effective date of the ordinance sought to be repealed.

(5) Additional petition requirements. Consistent with the provisions of this Charter, the Council may prescribe by ordinance additional procedures for filing such petitions and the form of such petitions, which procedures are in accordance with Article 11 of Title 31 of the Colorado Revised Statutes, as amended.

Section 4. Action on petitions.

(1) Action by Council. When an initiative or referendum petition has been finally determined sufficient, the City Council, within forty-five days, shall consider the proposed initiative ordinance or reconsider the referred ordinance. The Council shall have the power to change the detailed language of any proposed initiative ordinance and to affix the title thereto, so long as the general character of the measure will not be substantially altered. Repeal of any referred ordinance may be effected only by a two-thirds vote of the entire Board of Aldermen.

(2) Submission to voters. If the Council does not adopt an initiated ordinance or repeal a referred ordinance, the election on a proposed initiative or referred ordinance shall be held not less than thirty days and not later than one hundred fifty days from the date of the final Council vote thereon. If no regular election is to be held within the period prescribed in this subsection (2), the Council shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election. The Council may at its discretion provide for a special election at an earlier date within the period prescribed in this subsection (2). Copies of the proposed initiative or referred ordinance shall be made available to the public within a reasonable time before the election and also at the polls at the time of the election.

(3) Withdrawal of petitions. An initiative or referendum petition may be withdrawn at any time prior to the thirtieth day preceding the election set by the City. Withdrawal shall be effected by filing with the City Clerk a request for withdrawal signed by a majority of the petitioner's committee and the consent of the majority of the Council. Upon the filing of such request and Council approval, the petition shall have no further force or effect and all proceedings thereon shall be terminated.

Section 5. Results of election.

(1) If a majority of the electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results. If a majority of the electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results. If conflicting ordinances are approved at the same election, the ordinance receiving the greatest number of affirmative votes shall prevail.
(2) An ordinance adopted by the electorate may not be amended or repealed for a period of six months after the date of the election at which it was adopted. An ordinance repealed by the electorate may not be reenacted for a period of six months after the date of the election at which it was repealed; except that any ordinance may be adopted, amended or repealed at any time by appropriate referendum or initiative procedure in accordance with the provisions of this Article, or, if submitted to the electors by the Council on its own motion.

ARTICLE V

City Administration

Section 1. City Manager.

Except as otherwise provided by ordinance, the City Manager shall be the chief administrative officer of the City and shall serve at the pleasure of the Council. The Council, by a majority vote, shall appoint a City Manager without definite term and at a salary to be fixed, from time to time, by the Council. The City Manager shall be responsible to the Council and perform such duties as provided by statute or ordinance.

Section 2. City Attorney.

The Council shall appoint a City Attorney to serve at the pleasure of the Council. The City Attorney shall be an attorney admitted to practice law in Colorado, who shall have at least five years experience, preferably with experience in Colorado municipal law. The City Attorney shall be the legal representative of the City, shall advise the Council and City officials in matters relating to their official powers and duties, and shall perform such other duties as Council may prescribe by ordinance or resolution.

Section 3. Municipal Judge.

The Council shall appoint a Municipal Judge to serve for a two-year term, which term may be renewed at the discretion of the Council. The Municipal Judge shall be an attorney admitted to practice law in Colorado, with five years experience, preferably with experience as a Municipal Judge. The Judge may be removed for cause as provided by the City Council. The present term of the office of Municipal Judge shall expire on July 14, 2001.

Section 4. Commissions of Aldermen.

The City Council may establish commissions, by ordinance, for the various administrative departments of the City that are created from time to time. The purpose of any commission that is established by ordinance is to create a forum of open communication between commission members, the City Manager and the administrative department that is the subject of a commission. The City Council shall establish by ordinance the duties, roles and responsibilities of each commission that is established under this Section. The members of each commission shall be appointed by the Mayor and the Board of Aldermen. Commission members shall be selected from among the City Council. The commissions may review with the City Manager, the director or other employees of the department that is the subject of the commission, matters of significance related to purposes of the commission and may advise and make recommendations of policy, procedure, budget and other matters as determined by ordinance to the Council and the City Manager. Except as otherwise provided in this Charter or by ordinance, neither the commissions nor the members thereof shall dictate the appointment or removal of any City employee, nor shall they interfere with or give direction on job related functions to City employees. The City Manager and the director of a department that is the subject of a commission, shall report to the commissions as provided by ordinance.
Section 5. Boards and commissions.

The Board of Aldermen may establish, by ordinance, other boards and commissions and the authority, duties, responsibility, membership and terms of membership of such boards and commissions.

ARTICLE VI

Powers and Authority

Section 1. Powers and authority.

(1) In addition to all of the powers expressly granted or granted by implication to home rule municipalities by the Colorado Constitution, statutes of the State of Colorado, this Charter, and ordinances adopted by the Council not in conflict with this Charter, the City shall have the following powers and authority and all powers necessary to implement such powers and authority:

(a) To levy general ad valorem taxes upon all the taxable property located within the limits of the City of Black Hawk, which is subject to taxation for state, county and other purposes under the laws of the State of Colorado, and in the manner prescribed therein;

(b) To impose and collect a sales, occupational, admissions, lodging, excise, transfer or use tax and other taxes on the performance of an act, the engaging in an occupation, the enjoyment of a privilege in the City of Black Hawk, or for any other purpose. Such taxes, including sales taxes, may be imposed at any rate approved by ordinance and may be collected by the City, and the City may perform audits of all persons, businesses, corporations or firms subject to such taxes;

(c) To establish, support and regulate common schools;

(d) To borrow money on the credit of the City;

(e) To appropriate money and provide for the payment of the debt and expenses of the City;

(f) To make regulations to prevent the introduction of contagious diseases in the City, to make quarantine laws for that purpose, and to enforce the same within five miles of the City;

(g) To establish hospitals and make regulations for the government of the same;

(h) To make regulations to secure the general health of the inhabitants, to declare what shall be a nuisance, and to prevent and remove the same and assess all direct, indirect and collection costs of removal against the real property which shall become a perpetual lien against the property as provided by ordinance;

(i) To provide the City with water and sanitary sewer service;

(j) To open, alter, abolish, widen, extend, establish, grade, pave or otherwise improve and keep in repair, streets, avenues, lanes, alleys, sidewalks, drains and sewers. The City Council shall have the power, by ordinance, to levy and collect a special tax or assessment on the holders of lots on any street, lane, avenue or alley according to their respective fronts or other reasonable basis, for the purpose of grading, paving, widening, improving, constructing or repairing streets, and lighting such streets, lanes, avenues or alleys, and performing such other improvements as may be deemed necessary; except that such tax or assessment shall not exceed the actual costs of such improvements and shall be collected in the same manner as other City taxes;
(k) To license, restrain, regulate, prohibit and suppress tippling houses, gambling houses, bawdy houses and other disorderly houses, and the selling and giving away of any intoxicating or malt liquors by any person within the City, except by persons duly licensed;

(l) To form a special improvement district to pay for public improvements as provided by Colorado law;

(m) To regulate the policy of the City, to impose fines, forfeitures and penalties for the breach of any ordinance, and to provide for the recovery and appropriation of such fines and forfeitures and the enforcement of such penalties. All money collected under or by authority of any City ordinance shall be deemed and taken to belong to the City and disposed of by the Board of Aldermen, under the ordinances of the City, for the general use and benefit of the inhabitants thereof. The Board of Aldermen shall have the power to enforce obedience to City ordinances by fine or by imprisonment, or both;

(n) To make all ordinances which shall be necessary and proper for carrying into execution the powers specified in this home rule charter (Charter), such additional powers incident thereto, and such powers as are necessary to preserve and protect the health, safety and welfare of persons within the City concerning local and municipal matters so long as such ordinances are not repugnant to or inconsistent with the Constitution of the United States, the Colorado Constitution or this Charter;

(o) To determine the transfer of any real property held by the City;

(p) To acquire, construct, reconstruct, lease, improve or extend any income-producing facilities or projects, to impose and collect rates, fees or charges in connection with such facilities or projects, and to issue bonds payable solely from such rates, fees or charges to finance such facilities or projects;

(q) To acquire, construct, lease, sell, mortgage, manage or operate a utility, an enterprise or establish a separate entity for water, sewer, streets, power, parks, recreation, burial, historical, cultural, housing, development or promotion of the City, telephone, utilities, transportation, television relay, or any other public purpose, in the manner determined by ordinance;

(r) To acquire property within or without the boundaries of the City by condemnation for any public purpose as determined by the City Council;

(s) To include taxes and assessments on real property as a lien on the real property with the general property taxes as provided by ordinance, which property may be sold for any such taxes or assessments which became delinquent;

(t) To enter into contracts with public or private entities or persons which provide a benefit to the City;

(u) To impose fees, charges, land dedication requirements or any other requirement for any service, improvement or public benefit provided by the City either directly, indirectly or by agreement with another public or private person or entity; and

(v) To provide incentives to public or private persons or entities to acquire, construct, maintain, redevelop, refurbish or improve any real or personal property for historical, park and recreational, cultural, housing development or promotion of the City, telephone services, utilities, transportation or any other public purpose for the benefit of the City, by providing loans, grants or other assistance, monetary or otherwise, to such persons or entities.
ARTICLE VII

Additional Financial Powers

Section 1. Revenue bonds.

In addition to the authority to issue revenue bonds granted in this Charter and by state laws, any utility, enterprise or function of the City, which may be supported by revenues generated therefrom, including a mill levy dedicated for such purpose, may issue its own revenue bonds upon approval of the City Council.

Section 2. Bonds - generally.

The City may borrow money, pledge revenues and issue securities, in a form as authorized by ordinance, including but not limited to, short-term notes, emergency notes, anticipation warrants, general obligation bonds, revenue bonds, industrial-development revenue bonds, special assessment bonds, refunding bonds, lease-purchase agreements, long-term rental or lease agreements, installment purchase agreements, bond anticipation notes, tax anticipation notes, certificates of participation, and any other security authorized by statute for municipalities. Any of such securities may be refunded by the City. Terms, conditions and procedures for issuing or refunding such securities shall be in accordance with Colorado statutes applicable to municipalities unless otherwise provided in this Charter or by ordinance consistent with this Charter.

Section 3. Obligations of City - recital.

Notwithstanding any other provision of law or this Charter to the contrary, any ordinance or resolution authorizing or any trust indenture or other instrument pertaining to any bonds or similar instruments evidencing an obligation of the City of Black Hawk may provide that each bond or similar instrument therein authorized shall recite that it is issued under authority of this Charter. Such recital shall conclusively impart full compliance with all of the provisions of this Charter, and all bonds or similar instruments containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Section 4. Pledge of revenue.

(1) The City shall have the power to pledge irrevocably to the payment of or to secure any bonds or other obligations issued or incurred by the City the following revenues and receipts:

(a) Revenues or receipts derived from the taxes, assessments or fees imposed pursuant to this Charter; and

(b) Revenues or receipts derived from the taxes, fees or other charges imposed by the State of Colorado upon the activities of gaming and gambling occurring within the limits of the City of Black Hawk.

Section 5. Additional authority to issue bonds.

In addition to all statutory provisions granting municipalities the power to issue or refund bonds, or otherwise contract indebtedness, the City shall have the power to issue bonds payable wholly, or in part, from the revenues and receipts described in Section 4 of this Article or otherwise received by the City pursuant to procedures and upon terms and conditions which, as nearly as may be practicable, shall be substantially the same as those set forth in the provisions of Part 4 of Article 35 of Title 31, Colorado Revised Statutes, as amended, relating to water and sewer revenue bonds; except that the purposes for which the same may be issued shall not be so limited and the same shall be issued in accordance with the limitations of this Charter and any state law incorporated herein by reference if the same constitutes a general obligation debt within the meaning of Section 6 of Article XI of the Colorado Constitution. The powers conferred by this section are in addition and
supplemental to and not in substitution for, and the limitations imposed by this section shall not directly or indirectly modify, limit or affect the powers conferred by the provisions of any other law or this Charter. Bonds may be issued under this section without regard to the provisions of any other law or this Charter, and if so issued, insofar as the provisions of this section are inconsistent with the provisions of any other law or this Charter, the provisions of this section shall control.

Section 6. Provisions regarding Section 20 of Article X of the Colorado Constitution.

(1) For purposes of Section 20 of Article X of the Colorado Constitution, as applied to the City of Black Hawk:

(a) A grant shall include only funds received by the enterprise after application to the State or a local government for funds to be awarded on a competitive basis to entities meeting certain criteria. A grant shall not include any funds loaned or given to the enterprise by the City or any other entity, or any fees, taxes or assessments imposed for the enterprise, including property taxes derived from mills levied for and dedicated to the enterprise.

(b) Any funds collected by the City and paid to a public or private entity pursuant to an agreement between the City and the entity may be treated as a collection for another government and exempted from the fiscal year spending calculation of the City.

(c) The term ballot issue shall be limited to a new tax, a tax rate increase, a valuation for assessment ratio increase for a property class, a mill levy increase from the previous year, a tax policy change directly causing a net tax revenue gain, approval of a multiple-fiscal year direct or indirect debt or other financial obligation without adequate cash reserves, approval of spending limit changes, and approval of emergency taxes.

(d) Local government shall mean a county, a municipality as defined in Section 31-1-101(6), Colorado Revised Statutes, a school district, or a special district as defined in Section 31-1-103(20), Colorado Revised Statutes.

ARTICLE VIII

Miscellaneous

Section 1. Existing ordinances - validity.

All ordinances, contracts and formal actions previously adopted by the City, not repealed by direct or implied action of the City Council, and not in conflict with this Charter shall remain in full force and effect after passage of this Charter until specifically repealed by ordinance of the City Council. Nothing in this Charter shall be construed to amend, limit, alter, restrict or impair any agreements or contracts entered into by the City prior to the effective date of this Charter.

Section 2. Title to property.

The title to own lots and real estate described therein unsold at a public sale held by the City Marshal or other City or county official, pursuant to the provisions of this Charter or other law then existing, shall vest absolutely in the City, and may be disposed of in such manner as may be provided by the ordinances of such City. No entity other than the City may sell or otherwise transfer property in which the City has an interest without the express written authority of the City.
Section 3. Notice Required on Negligence and Tort Actions.

No action for the recovery of compensation for personal injury, or death or property damage against the City on account of its negligence or tort, shall be maintained unless written notice of the alleged time, place and cause of injury, death or property damage is given to the City Clerk by the person allegedly injured or whose property was allegedly damaged, his agent or attorney, or the personal representative for the person who has died, within one hundred eighty (180) days of the occurrence which allegedly caused the death, injury or property damage. Any action pursuant to this Section must be commenced within two (2) years of the occurrence or of the accidents which allegedly caused the injury, death or property damage. This provision shall not be construed as any waiver of any governmental immunity the City may now have or which may become available to any Colorado municipality in the future.

Section 4. Right of Eminent Domain.

The City shall have the right of eminent domain for all municipal purposes whatever, either within or without the limits of the Town.

Section 5. Contracts With Other Governmental Entities.

The City Council may by ordinance enter into contracts or agreements with other governmental or quasi-governmental entities for the mutual benefit of the entities.


The Council, on behalf of the City, may receive or refuse bequests, gifts and donations of all kinds or property in fee simple or in trust, for public, charitable or other purposes, and do all things and acts necessary to carry out the purposes of such bequests, gifts and donations, with the power to manage, lease, sell or otherwise dispose of the same in accordance with the terms of the bequests, gifts or trust. The City Council may delegate the responsibility for such bequests, gifts and donations to such persons as the City Council may deem advisable.

Section 7. Contracts for Purchases, Lease, and Construction of Public Works.

The City Council may establish by ordinance procedures for entering into contracts for purchases, contracts for leases and contracts for construction of public works.

Section 8. Annexation and Zoning.

In all proceedings for the annexation of territory to the City, the City Council shall require concurrent zoning of the same.

Section 9. Amendment.

In addition to the provisions otherwise stated in this Charter, this Charter may be amended in the manner provided by Article XX of the Constitution of the State of Colorado at any general election or special election called for such purpose:

a. Upon questions which may be submitted to the electors by a majority of the Council, or

b. Upon questions which may be submitted by the electors. If provisions of two (2) or more proposed amendments adopted or approved at the same election conflict, the amendment receiving the greatest number of votes shall prevail on the conflicting issue.

Section 10. Retirement Plans.

This Charter shall not affect any contractual relationships existing on the effective date of this Charter between the City and any officer or employee by reason of any retirement or pension plans in effect.
Section 11. Effect of State Statutes.

The power to supersede any law of the State of Colorado now or hereafter in force, insofar as it applies to local or municipal affairs, shall be reserved to the City, acting by ordinance, subject only to restrictions of the State Constitution and subsequent amendments to this Charter and by ordinance.

Section 12. Severability.

If any provision, article, section, sentence, clause or part of this Charter, or the application thereof to any person or circumstance, is adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such adjudication shall not affect, impair or invalidate the Charter as a whole or any part hereof other than the parts so adjudged to be invalid, and to this end the provisions of this Charter are declared to be severable.


In case of riot, insurrection or extraordinary emergency, the Mayor shall assume the authority to execute any action necessary for the protection of life and property. Such authority may include but not be limited to establishing regulations governing conduct and activities related to the cause of the emergency, and if the emergency situation continues, the Mayor shall convene the City Council who may take such action as it deems necessary. In the event it becomes necessary, the line of succession provided below in this Charter shall be followed.


The City Council shall have the power to provide for the continuity of government of the City of Black Hawk in the event of natural or enemy caused disaster. Such power shall be employed in a manner which will preserve representative government to the City of Black Hawk and which will provide an orderly line of succession of officers, notwithstanding the provisions of this Charter. Such succession shall commence with the Mayor and shall then revert to the Aldermen by order of seniority, then to the City Manager and then through an orderly line of succession of the administrative department heads as determined by ordinance.

Section 15. Chapter Titles and Subheadings.

The Chapter titles and subheadings are inserted for convenience and reference only and shall not be construed to limit, describe or control the scope or intent of any provision therein.

Section 16. Construction of Words.

Except as otherwise specifically provided or indicated by the context hereof, all words used in this Charter indicating the present tense shall not be limited to the time of the adoption of this Charter but shall extend to and include the time of the happening of any event or requirement for which provision is made herein. The singular number shall include the plural, the plural shall include the singular and the masculine gender shall extend to and include the feminine gender and neuter, and "person" may extend to and be applied to bodies politic and corporate and to partnerships as well as individuals.

Section 17. Indemnification of Mayor and Aldermen.

The City Council may by ordinance indemnify any Alderman, the Mayor, any employee or any appointed official who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding by reason of the fact that he is or was an officer of the City, against expenses (including attorney's fees), judgements, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in the best interest of the City and had no reasonable cause to believe his conduct was unlawful.

The City Council shall cause to be prepared a Personnel Manual for the City which shall provide policies and guidelines for all City employees and their supervisors.

Section 19. Fire Protection.

The City shall have the exclusive authority to provide, manage and control fire protection within its boundaries, which shall include, without limitation, the following powers: to adopt and enforce building and fire codes and regulations; to erect engine houses and provide fire engines, hose, hose cars, hooks and ladders and other implements for the extinguishing of fires and provide for the use and management of the same by volunteer fire companies or otherwise; to determine the powers and duties of the members of the fire department in taking charge of property to the extent necessary to bring under control and extinguish any fire; to preserve and protect property not destroyed by fire; and to restrain persons from interfering with the discharge of the duties of the members of the fire department in connection with the fighting of any fire or any other emergency.

Fire protection within the City is a matter of purely local concern, which the City shall manage and control without interference from any state agency, county agency, regional service authority, fire district, public improvement district, local improvement district, or any other organization or political subdivision which attempts to usurp the City’s control over fire protection within City boundaries. This section is expressly intended to preserve the City’s exclusive authority over fire protection and other emergency services, which authority has been granted to the City by this Charter, by Article XX, § 6 of the Colorado Constitution, and by C.R.S. § 31-15-601. The City’s authority to provide fire protection shall be exclusive, despite any contrary provision that may be contained in C.R.S. §32-7-101 et seq., as amended, or any other state statute or regulation.

ARTICLE IX
Transition Period

Section 1. Purpose of Transitional Provisions.

The purpose of this Article is to provide for an orderly transition from the present City government of Black Hawk to a Home Rule City government under provisions of this Charter. The provisions of this Article shall constitute a part of this Charter only to the extent necessary to accomplish that purpose.

Section 2. Effective Date of Charter.

This Charter shall become effective immediately upon voter approval at a regular or special election held for the purpose of considering this Charter.

Section 3. Continuation of Present Elected Officials.

The present Board of Aldermen and the Mayor in office at the time of the adoption of this Charter shall remain the Board of Aldermen and the Mayor and shall continue to serve and carry out the functions, powers and duties of City Council offices until the end of their respective terms.
Section 4. Continuation of Appointed Officers and Employees.

All appointive officers and all employees of the City at the time this Charter is adopted shall continue in that office or employment which corresponds to the City office or employment which they held prior to the effective date of this Charter. They shall, in all respects, be subject to the provisions of this Charter, as though they had been appointed or employed in the manner provided in this Charter, except that any officer or employee who holds a position which this Charter provides to be held at the pleasure of City Council shall hold such position only at such pleasure regardless of the term for which he was originally appointed.

Section 5. Continuation of Prior City Legislation.

All bylaws, ordinances, resolutions, contracts, personnel/employee guidelines, rules and regulations of the City in force at the time this Charter becomes effective shall continue in force except insofar as they conflict with the provisions of this Charter, or shall be amended or repealed by ordinance enacted under authority of this Charter.

THE CITY OF BLACK HAWK

CHARTER COMMISSION CERTIFICATE OF FINAL ADOPTION

We, the undersigned, present members of the City of Black Hawk Charter Commission, duly elected by the people of Black Hawk, Colorado, at a special election held on September 26, 2000, under the authorization of Article XX of the Constitution of the State of Colorado, to frame a Home Rule Charter for the City of Black Hawk, do hereby certify that the foregoing is the Proposed Charter as finally approved and adopted by the members of the Charter Commission on the 7th day of November, 2000, for submission to the people of Black Hawk at a special election to be held on January 16, 2001.
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BLACK HAWK
MUNICIPAL CODE

1994

A Codification of the General Ordinances
of the City of Black Hawk, Colorado

Beginning with Supp. No. 18,
Supplemented by Municipal Code Corporation
PREFACE

The City of Black Hawk, previously a territorial city established by the State legislature on March 11, 1864, and presently a home rule municipality, has published its Municipal Code in a format which features the following:

The Table of Contents is the table containing each chapter and article title, with reference to page location. Preceding each chapter is a chapter table of contents, also identifying each article by the subject name provided.

The two-place section numbering system places the chapter number first, followed by a hyphen and section number. This two-place system is simplified by the elimination of article numbering. Each section may be cited by the chapter and section numbers which, together with reserved section numbers, are in sequence within each chapter.

The open chapter and page numbering system creates reserved chapter and page numbers for expansion or revision of the code without undue complication when changes are made to the code by supplementation.

The Disposition of Ordinances Table identifies the source for the contents of the code. This table provides ordinance numbers in chronological order and location by section number for the present code contents. Thus, if there is interest in determining whether an ordinance, or a portion thereof, is contained within the code, the Disposition of Ordinances Table will provide that information. The Table of Up-to-Date Pages lists all of the current pages through the most recent supplementation.

The Index provides references by common and legal terminology to the appropriate code sections. Cross references are provided with the Index when appropriate.

Supplements to the code provide regular updating of the code to maintain it as a current compilation of all the legislation which has general and continuing effect. Without regular supplementation, the code would soon lose its usefulness as a complete source of the general law of the municipality. Supplementation is accomplished by the periodic publication of additions and amendments to the code.

municode

Municipal Code Corporation | P.O. Box 2235 Tallahassee, FL 32316
info@municode.com | 800.262.2633
www.municode.com
AN ORDINANCE OF THE CITY OF BLACK HAWK, ADOPTING AND ENACTING A NEW MUNICIPAL CODE FOR THE CITY OF BLACK HAWK; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE.

Be It Ordained by the Board of Aldermen of the City of Black Hawk, Colorado:

Section 1. The code entitled The Black Hawk Municipal Code published by Colorado Code Publishing Company, consisting of Chapters 1 through 18, is adopted.

Section 2. All ordinances of a general and permanent nature enacted on or before this Ordinance, which are inconsistent with the provisions of the Black Hawk Municipal Code, to the extent of such inconsistency, are hereby repealed.


Section 4. The repeal established in Section 2 of this Ordinance shall not be construed to revive any ordinance or part thereof that had been previously repealed by any ordinance which is repealed by this Ordinance.

Section 5. The following codes were adopted by reference and incorporated in the Municipal Code of the City of Black Hawk. One (1) copy is on file in the City Clerk's office:

(1) The Model Traffic Code for Colorado Municipalities, 1977 edition, published by the State Department of Highways, as adopted and amended in Section 8-1 et seq.;

(2) The Uniform Fire Code, 1991 edition, published by the Western Fire Chiefs Association and the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601, as adopted and amended in Section 18-22 et seq.;

(3) The Uniform Code for the Abatement of Dangerous Buildings, 1991 edition, published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601, as adopted and amended in Section 18-82 et seq.;


Section 6. The following codes are hereby adopted by reference and incorporated in the Municipal Code of the City of Black Hawk. One (1) copy is on file in the City Clerk's office:
Section 7. The penalties provided by the Municipal Code of the City of Black Hawk are hereby adopted as follows:

(1) **Sec. 1-73. Criminal penalties.**

(a) Every person who, at the time of commission of a violation of a criminal ordinance of the City, was at least eighteen (18) years of age, and who is subsequently convicted of, or pleads guilty or nolo contendere to, a violation of any criminal ordinance of the City, shall be punished by a criminal penalty of not less than twenty-five dollars ($25.00) but not exceeding one thousand dollars ($1,000.00) per violation; imprisonment not exceeding one (1) year or both such fine and imprisonment. Any restitution, community service or program participation ordered by the Municipal Court shall be in addition to any such fine or imprisonment.

(b) Every person who, at the time of commission of a violation of a criminal ordinance of the City, was at least ten (10) but not yet eighteen (18) years of age, and who is subsequently convicted of, or pleads guilty or nolo contendere to, a violation of any criminal ordinance of the City, shall be punished by a criminal penalty of not less than twenty-five dollars ($25.00) but not exceeding one thousand dollars ($1,000.00) per violation. Any restitution, community service or program participation ordered by the Municipal Court shall be in addition to any fine.

(2) **Sec. 1-74. Civil penalties.**

Every person who commits a civil infraction and is found guilty of, or pleads guilty or nolo contendere to, the commission of the civil infraction shall receive a civil penalty of not less than twenty-five dollars ($25.00) but not exceeding four hundred ninety-nine dollars ($499.00) per commission. In addition to the civil penalty, the Municipal Court may order restitution, but it cannot require community service or program participation. Any disobedience to or interference with a court order in a civil infraction proceeding issued by the Municipal Court may be punished as a contempt of Court.
(3) Sec. 1-76. Community service.

Community service means any work which is beneficial to the public, any public entity or any bona fide nonprofit private or public organization, which work involves a minimum of direct supervision or other public cost and which work would not, with the exercise of reasonable care, endanger the health or safety of the persons required to work. The court shall assess an amount, not to exceed sixty dollars ($60.00), upon every person required to perform community service pursuant to this Section. The court may waive this fee if the court determines such person to be indigent.

(4) Sec. 4-90. Deficiency due to negligence. (Article V, Use Tax)

(a) If the use tax is not paid in full and it is due to negligence or intentional disregard of this Article or the City's rules and regulations, there shall be added a ten-percent penalty to the unpaid portion of the use tax. The penalty shall be collected in addition to the interest collected under Section 4-89. The use tax, interest and penalties shall become due and payable ten (10) days after written notice and demand to the taxpayer by the Building Department. This provision shall not apply if the taxpayer intended to defraud the City.

(b) If any part of the deficiency is due to fraud with the intent to evade the use tax, there shall be added a one-hundred-percent penalty to the unpaid portion of the use tax. The penalty shall be collected in addition to the interest collected under Section 4-89. An additional three-percent per month shall accrue from the date the return was due until paid in full. The use tax, interest and penalties shall become due and payable ten (10) days after written notice and demand by the Building Department.

(5) Sec. 4-91. Neglect or refusal to make return or to pay. (Article V, Use Tax)

If a person neglects or refuses to file a use tax return or to pay the required use tax, the Building Department shall estimate the amount of use taxes due for the period that the taxpayer is delinquent based upon the available information. A ten-percent penalty shall be added to the amount due, in addition to interest on the delinquent use taxes, at the rate imposed under Section 4-93, plus one-half of one percent (.5%) per month from the date the return was due until paid in full.

(6) Sec. 4-92. Penalty interest on unpaid use tax.

Any use tax due and unpaid shall be a debt to the City, and shall draw interest at the rate imposed under Section 4-93, in addition to the interest provided by Section 4-89, from the time when due until paid.

(7) Sec. 4-123. Late penalty and interest. (Article VI, Parking Impact Fees)

If a person fails to file a return or pay a tax or impact fee when due, there shall be added a ten percent (10%) penalty to the total amount of the deficiency, but not less than ten dollars ($10.00), and interest shall accrue at the rate of one percent (1%) each month on the total amount due on the deficiency from the time the return was due to the date the tax is paid. Payments of part but less than the total amount due shall be first applied to the penalty, then to the accrued interest, and lastly, to the tax itself.
Sec. 6-71. Penalty for violation. (Article II, Alcoholic Beverages)

(a) Any licensee who violates the terms of this Article may be subject to suspension or revocation of his or her liquor license pursuant to Section 12-47-110, C.R.S.

(b) Whenever the Board of Aldermen's decision to suspend a license for fourteen (14) or fewer days becomes final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension or such earlier date as the Board of Aldermen may designate in its decision, petition for permission to pay a fine in lieu of having the license suspended for all or part of the suspension period. The Board of Aldermen may, in its sole discretion, stay the proposed suspension in part or in whole and grant the petition if it finds, after any investigation, that it deems desirable that:

1. The public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purpose;

2. The books and records of the licensee are kept in such a manner that the loss of sales during the proposed suspension can be determined with reasonable accuracy; and

3. The licensee has not had its license suspended or revoked nor had any suspension stayed by payment of a fine during the two (2) years immediately preceding the date of the motion or complaint which has resulted in a final decision to suspend the license.

(c) Payment of any fine shall be in the form of cash, a certified check or a cashier's check payable to the City. Such fine shall be paid into the general fund of the City.

(d) The Board of Aldermen may grant such conditional or temporary stays as are necessary for it to complete its investigations, to make its findings as specified in Subsection (b) of this Section, and to grant a permanent stay of the entire or part of the suspension. If no permanent stay is granted, the suspension shall go into effect on the operative date finally set by the Board of Aldermen.

Sec. 8-24. Penalty. (Article II, Parking)

Every person convicted of or pleading guilty to a violation of any of the parking provisions set forth in the Model Traffic Code for Colorado Municipalities, including Sections 10-1 to 10-9; 11-1 to 11-3; 12-2 to 12-5; and 13-1 to 13-6, or in this Article shall be punishable by a fine of ten dollars ($10.00) for each such violation, payable within thirty (30) days of the violation. The fine shall double to twenty dollars ($20.00) if not paid within the thirty-day period.

Sec. 10-144. Possession of cannabis.

(b) It shall be unlawful to possess one (1) ounce or less of cannabis or cannabis concentrate, and upon conviction thereof, or plea of guilty or no contest thereto, punishment shall not be by imprisonment, but shall be by a fine of not more than one hundred dollars ($100.00).
(c) It shall be unlawful openly and publicly to display or consume one (1) ounce or less of cannabis concentrate, and upon conviction thereof, or a plea of guilty or no contest thereto, shall be punished by a fine of one hundred dollars ($100.00), and by imprisonment not exceeding fifteen (15) days.

(11) Sec. 10-203. Distribution of cigarettes and tobacco products to minors.

(e) Any person who is convicted of, or pleads guilty or nolo contendere to, a violation of Subsections (a), (b) or (d) shall be punished by a fine of two hundred dollars ($200.00). Any person who is convicted of, or pleads guilty or nolo contendere to, a violation of Subsection (c) shall be punished by a fine of fifty dollars ($50.00).

Section 8. Additions or amendments to the Code, when passed in the form as to indicate the intention of the City to make the same a part of the Code, shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 9. Ordinances adopted after this Ordinance that amend or refer to ordinances that have been codified in the Code, shall be construed as if they amend or refer to those provisions of the Code.

Section 10. This Ordinance shall become effective upon posting.

INTRODUCED this 23rd day of February, 1994.

CITY OF BLACK HAWK, COLORADO

ATTEST: /s/ __________________________
Kathryn Ecker, Mayor

/s/ __________________________
Penny Round, City Clerk
(SEAL)

ADOPTED AND ORDERED PUBLISHED on this 23rd day of March, 1994.

ATTEST: /s/ __________________________
Kathryn Ecker, Mayor

/s/ __________________________
Penny Round, City Clerk
(SEAL)

APPROVED AS TO FORM:

/s/ __________________________
James S. Maloney, City Attorney
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Code

Sec. 1-1. Adoption of Code.

The published code known as the Black Hawk Municipal Code, of which one (1) copy is now on file in the office of the City Clerk and may be inspected during regular business hours, is enacted and adopted by reference as a primary code and incorporated herein as if set out at length. This primary code has been promulgated by the City of Black Hawk, Colorado, as a codification of all the ordinances of the City of Black Hawk of a general and permanent nature through Ordinance No. 94-1, for the purpose of providing an up-to-date code of ordinances, properly organized and indexed, in published form for the use of the citizens and officers of the City. (Ord. 94-1 §1)

Sec. 1-2. Purpose.

The City Council finds, determines and declares that the ordinance codified in this Chapter is necessary for the general health, safety and welfare of the community. (Ord. 94-1 §1)

Sec. 1-3. Title and scope.

This Code shall be known as the Black Hawk Municipal Code. This Code constitutes the adoption, compilation, revision and codification of all the ordinances of the City of Black Hawk, of a general and permanent nature. (Ord. 94-1 §1)

Sec. 1-4. Adoption of codes by reference.

Secondary codes may be adopted by reference, as provided by state law. (Ord. 94-1 §1)

Sec. 1-5. Repeal of ordinances not contained in Code.

All existing ordinances and portions of ordinances of a general and permanent nature which are inconsistent with any ordinance included in the adoption of this Code are hereby repealed as of the effective date of the ordinance adopting this Code, except as hereinafter provided. (Ord. 94-1 §1)

Sec. 1-6. Matters not affected by repeal.

The repeal of ordinances and parts of ordinances of a permanent and general nature by Section 1-5 above shall not affect any offense committed or act done, any penalty or forfeiture incurred or any contract, right or obligation established prior to the time said ordinances and parts of ordinances are repealed. (Ord. 94-1 §1)

Sec. 1-7. Ordinances saved from repeal.

The continuance in effect of temporary and/or special ordinances and parts of ordinances, although omitted from this Code, shall not be affected by such omission therefrom, and the adoption of the Code shall not repeal or amend any such ordinance or part of any such ordinance. Among the ordinances not repealed or amended by the adoption of this Code are ordinances:

1. Creating, opening, dedicating, vacating or closing specific streets, alleys and other public ways.

2. Naming or changing the names of specific streets and other public ways.

3. Establishing the grades of specific streets and other public ways.

4. Establishing the grades or lines of specific sidewalks.
(5) Authorizing or relating to specific issuances of general obligation or special revenue bonds.

(6) Creating specific sewer and paving districts and other local improvement districts.

(7) Authorizing the issuance of specific local improvement district bonds.

(8) Making special assessments for local improvement districts and authorizing refunds from specific local improvement district bond proceeds.

(9) Annexing territory to or excluding territory from the City.

(10) Dedicating or accepting any specific plat or subdivision.

(11) Calling or providing for a specific election.

(12) Authorizing specific contracts for purchase of beneficial use of water by the City.

(13) Approving or authorizing specific contracts with the State, with other governmental bodies or with others.

(14) Authorizing a specific lease, sale or purchase of property.

(15) Granting rights-of-way or other rights and privileges to specific railroad companies or other public carriers.

(16) Granting a specific gas company or other public utility the right or privilege of constructing lines in the streets and alleys or of otherwise using the streets and alleys.

(17) Granting a franchise to a specific public utility company or establishing rights for or otherwise regulating a specific public utility company.

(18) Setting rates, tolls and charges for any water, sewer, utility or proprietary fee, unless otherwise specifically set forth in this Code.

(19) Appropriating money.

(20) Levying a temporary tax or fixing a temporary tax rate.

(21) Relating to salaries.

(22) Amending the Official Zoning Map. (Ord. 94-1 §1)


In compiling and preparing the ordinances of the City for adoption and revision as part of the Code, certain grammatical changes and other changes were made in existing ordinances. It is the intention of the City Council that all such changes be adopted as part of the Code as if the ordinances so changed had been previously formally amended to read as such. (Ord. 94-1 §1)

Secs. 1-9—1-20. Reserved.

ARTICLE II

Definitions and Usage


The following words and phrases, whenever used in the ordinances of the City of Black Hawk and/or any codification of the same, shall be construed as defined in this Section, unless a
different meaning is intended from the context or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

**Board of Aldermen** means the Board of Aldermen of the City of Black Hawk.

**City** means the City of Black Hawk, Colorado, or the area within the territorial limits of the City of Black Hawk, and such territory outside of the City over which the City has jurisdiction or control by virtue of any constitutional or statutory provision.

**City Council** means the Mayor and the Board of Aldermen of the City of Black Hawk.

**County** means the county of Gilpin, Colorado.

**C.R.S.** means Colorado Revised Statutes, including all amendments thereto.

**Law** denotes applicable federal law, the Constitution and statutes of the State of Colorado, the ordinances of the City and, when appropriate, any and all rules and regulations which may be promulgated thereunder.

**May** is permissive.

**Misdemeanor** means and is to be construed as meaning violation and is not intended to mean crime or criminal conduct.

**Month** means a calendar month.

**Must** and **shall** are both mandatory.

**Oath** shall be construed to include an affirmation or declaration in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words **swear** and **sworn** shall be equivalent to the words **affirm** and **affirmed**.

**Ordinance** means a law of the City; provided that a temporary or special law, administrative action, order or directive may be in the form of a resolution.

**Owner**, applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of such building or land.

**Person** means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust or organization, or the manager, lessee, agent, servant, officer or employee of any of them.

**Personal property** includes money, goods, chattels, things in action and evidences of debt.

**Preceding** and **following** mean next before and next after, respectively.

**Property** includes real and personal property.

**Real property** includes lands, tenements and hereditaments.

**Sidewalk** means that portion of a street between the curbline and the adjacent property line intended for the use of pedestrians.

**State** means the State of Colorado.

**Street** includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs or other public ways in the City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this State.

**Tenant** and **occupant**, applied to a building or land, includes any person who occupies all or a part of such building or land, whether alone or with others.
**Written** includes printed, typewritten, mimeographed or multigraphed, or otherwise reproduced in permanent visible form.

*Year* means a calendar year. (Ord. 94-1 §1)

**Sec. 1-22. Computation of time.**

The time within which an act is to be done shall be computed by excluding the first and including the last day; but if the time for an act to be done shall fall on Saturday, Sunday or a legal holiday, the act shall be done upon the next regular business day following such Saturday, Sunday or legal holiday. (Ord. 94-1 §1)

**Sec. 1-23. Title of office.**

Use of the title of any officer, employee, department, board or commission means that officer, employee, department, board or commission of the City. (Ord. 94-1 §1)

**Sec. 1-24. Usage of terms.**

All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such peculiar and appropriate meaning. (Ord. 94-1 §1)

**Sec. 1-25. Grammatical interpretation.**

The following grammatical rules shall apply to this Code and City ordinances unless it is apparent from the context that a different construction is intended:

(1) Any gender includes the other genders.

(2) The singular number includes the plural and the plural includes the singular.

(3) Words used in the present tense include the past and future tenses and vice versa, unless manifestly inapplicable. (Ord. 94-1 §1)

**Secs. 1-26—1-40. Reserved.**

**ARTICLE III**

**General**

**Sec. 1-41. Titles and headings not part of Code.**

Chapter and article titles, headings and titles of sections and other divisions in the Code or in supplements made to the Code are inserted in the Code, may be inserted in supplements to the Code for the convenience of persons using the Code, and are not part of the Code. (Ord. 94-1 §1)

**Sec. 1-42. Authorized acts by agents, representatives.**

When an act is required by this Code or an ordinance, the same being such that it may be done as well by an agent or representative as by the principal, such requirement shall be construed to include all such acts performed by any authorized agent or representative. (Ord. 94-1 §1)

**Sec. 1-43. Prohibited acts.**

Whenever in this Code any act or omission is made unlawful, it includes causing, allowing, permitting, aiding, abetting, suffering or concealing the fact of such act or omission. (Ord. 94-1 §1)
Sec. 1-44. Purpose of ordinances.

The provisions of this Code, and all proceedings under it, are to be construed with a view to effect their objectives and to promote justice. (Ord. 94-1 §1)

Sec. 1-45. Repeal of ordinances.

The repeal of an ordinance shall not repeal the repealing clause of such ordinance or revive any ordinance which has been repealed thereby. (Ord. 94-1 §1)

Sec. 1-46. Severability.

The provisions of this Code are declared to be severable, and if any section, provision or part thereof shall be held unconstitutional or invalid, the remainder of this Code shall continue in full force and effect, it being the legislative intent that this Code would have been adopted even if such unconstitutional matter had not been included therein. It is further declared that, if any provision or part of this Code, or the application thereof to any person or circumstances, is held invalid, the remainder of this Code and the application thereof to other persons shall not be affected thereby. (Ord. 94-1 §1)

Sec. 1-47. Amendments to Code.

Ordinances and parts of ordinances of a permanent and general nature, passed or adopted after the adoption of this Code, may be passed or adopted either in the form of amendments to the Code adopted by this Code or without specific reference to the Code. However, in either case, all such ordinances and parts of ordinances shall be deemed amendments to the Code, and all of the substantive, permanent and general parts of said ordinances and changes made thereby in the Code shall be inserted and made in the Code as provided in Section 1-50 hereof. (Ord. 94-1 §1)


At least one (1) copy of the Code shall be kept in the office of the City Clerk at all times, and such Code may be inspected by any interested person at any time during regular office hours, but may not be removed from the City Clerk's office except upon proper order of a court of law. (Ord. 94-1 §1)

Sec. 1-49. Examination of Code.

The Mayor and City Clerk shall carefully examine at least one (1) copy of the Code adopted by this ordinance to see that it is a true and correct copy of the Code. Similarly, after each supplement has been prepared, printed and inserted in the Code, the Mayor and City Clerk shall carefully examine at least one (1) copy of the Code as supplemented. The copy of the Code as originally adopted or amended shall constitute the permanent and general ordinances of the City and shall be so accepted by the courts of law, administrative tribunals and all others concerned. (Ord. 94-1 §1)


(a) The City Clerk shall cause supplementation of the Code to be prepared and printed from time to time as he or she may see fit. All substantive, permanent and general parts of ordinances passed by the Board of Aldermen or adopted by initiative and referendum, and all amendments and changes in ordinances or other measures included in the Code prior to the supplementation and since the previous supplementation, shall be included.

(b) It shall be the duty of the City Clerk, or someone authorized and directed by the City Clerk, to keep up to date the copy of the book containing the Code required to be filed in the office of the City Clerk for the use of the public. (Ord. 94-1 §1)


Copies of the Code book may be purchased from the City Clerk upon the payment of a fee
Sec. 1-52. Altering or tampering with Code; penalties for violation.

Any person who alters, changes or amends this Code, except in the manner prescribed in this Article, or who alters or tampers with this Code in any manner so as to cause this Code to be misrepresented, shall have committed a civil infraction and be punishable as provided by Section 1-74. For each day, or portion thereof, during which any violation continues, a person may be cited for a separate civil infraction. The penalties specified in this Section shall be cumulative and nothing shall be construed as either prohibiting or limiting the City from pursuing such other remedies or penalties in an action at law or equity. (Ord. 94-1 §1)

Secs. 1-53—1-70. Reserved.

ARTICLE IV

General Penalty

Sec. 1-71. Purpose.

It is the purpose of the City Council to establish two (2) distinct types of penalties for Code violations. There shall be criminal penalties for Code violations where the nature of the violation is so severe to justify the imposition of criminal sanctions. There shall also be civil penalties, which shall be of an administrative nature and a judgment of conviction will not carry the same stigmatizing or condemnatory significance as criminal penalties. (Ord. 94-1 §1)

Sec. 1-72. Violations.

It is a violation of this Code for any person to do any act which is forbidden or declared to be unlawful, or to fail to do or perform any act required, in this Code. (Ord. 94-1 §1)
Sec. 1-74. Civil penalties.

Every person who commits a civil infraction and is found guilty of, or pleads guilty or nolo contendere to, the commission of the civil infraction shall receive a civil penalty of not less than twenty-five dollars ($25.00) but not exceeding four hundred ninety-nine dollars ($499.00) per commission. In addition to the civil penalty, the Municipal Court may order restitution, but it cannot require community service or program participation. Any disobedience to or interference with a court order in a civil infraction proceeding issued by the Municipal Court may be punished as a contempt of Court. The burden of proof for any civil infraction shall be by a preponderance of the evidence. (Ord. 94-1 §1; Ord. 96-3 §1)

Sec. 1-75. Restitution.

Authority is hereby expressly granted to the judges of the Municipal Court to award, as restitution to any victim of any civil infraction or criminal violation of this Code, an amount equal to the actual damages suffered by said victim, or to order a person found, or pleading, guilty to any such violation to pay such restitution as ordered by the Municipal Court. Said restitution shall be determined by the submission of a bill of costs by said victim to the Municipal Court on a form approved by the Municipal Court, but the Municipal Court shall be limited to awarding as such restitution only actual costs incurred by said victim. Authority is expressly granted to the Municipal Court to order such restitution for any and all costs incurred by public safety and/or emergency response agencies of the City or other governmental or quasi-governmental entities in connection with the initial response to and all subsequent follow-up investigation of violations of this Code. Any restitution ordered by the Municipal Court shall be in addition to any fine and/or imprisonment authorized by this Code and shall likewise be applicable to any situation in which deferred judgment or deferred sentence is accepted and/or imposed by the Municipal Court. (Ord. 88-4 §1; Ord. 94-1 §1)

Sec. 1-76. Community service.

Community service means any work which is beneficial to the public, any public entity or any bona fide nonprofit private or public organization, which work involves a minimum of direct supervision or other public cost and which work would not, with the exercise of reasonable care, endanger the health or safety of the persons required to work. The court shall assess an amount, not to exceed sixty dollars ($60.00), upon every person required to perform community service pursuant to this Section. The court may waive this fee if the court determines such person to be indigent. (Ord. 94-1 §1)

Sec. 1-77. Fines and penalties.

Any voluntary plea of guilty or nolo contendere to the original charge or to a lesser or substituted charge shall subject the person so pleading to all fines and/or penalties applicable to the original charge. Any voluntary plea of guilty or nolo contendere to the original civil infraction or to a lesser or substituted infraction shall subject the person so pleading to all civil penalties applicable to the original charge. (Ord. 94-1 §1)

Sec. 1-78. Penalty for violations of ordinances adopted after adoption of Code.

Any person who shall violate any provision of any ordinance of a permanent and general nature passed or adopted after adoption of this Code, either before or after it has been inserted in the Code by a supplement, shall, upon conviction thereof, be punishable as provided in this Article unless another penalty is specifically provided for the violation. (Ord. 94-1 §1)

Sec. 1-79. Interpretation of unlawful acts.

Whenever in this Code any act or omission is made unlawful, it is also unlawful to cause,
allow, permit, aid, abet or suffer such unlawful act or omission. Concealing or in any manner aiding in the concealing of any unlawful act or omission is similarly unlawful. (Ord. 94-1 §1)

Secs. 1-80—1-90. Reserved.

ARTICLE V
Inspections

Sec. 1-91. Entry.

Whenever necessary to make an inspection to enforce any ordinance, or whenever there is probable cause to believe that there exists an ordinance violation in any building or upon any premises within the jurisdiction of the City, any public official of the City may, upon presentation of proper credentials and upon obtaining permission of the occupant or if unoccupied, the owner, enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon him or her by ordinance. In the event the occupant, or if unoccupied, the owner, refuses entry to such building or premises, or the public official is unable to obtain permission of such occupant or owner to enter such building or premises, the public official is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry. (Ord. 94-1 §1)

Sec. 1-92. Authority to enter premises under emergency.

Law enforcement officers, members of the Fire Department, other fire departments operating under a mutual assistance agreement or automatic aid agreement with the City, certified emergency medical technicians and paramedics during the course of employment with a governmental agency are hereby granted the authority to enter private residences within the City without invitation from the occupant or occupants of the residence at any time such person has reasonable grounds to believe a medical emergency is in progress within the subject premises and the occupant or occupants of such premises are incapable of consenting to the entry because of such medical emergency. (Ord. 94-1 §1)

Secs. 1-93—1-110. Reserved.

ARTICLE VI
Seal

Sec. 1-111. Corporate seal.

(a) Legislative findings. The City Council hereby makes the following legislative findings:

(1) In 1862, John J. Pratt and Bela S. Buell produced a lithographed map entitled "Map of the Gold Regions in the Vicinity of Central City, Gilpin County, Colorado Territory" and upon said map egregiously and affrontingly identified the nascent community of Black Hawk Point as Enterprise; and,

(2) John E. Dillingham was the accomplished young artist who sketched the Colorado Territorial scenes which adorn the border of the Pratt and Buell map. Dillingham, during this same time period, also created a crayon sketch of Black Hawk Point; and,

(3) William L. Lee, Dr. Fredrick H. Judd, and Mylo Lee were the owners of the largest, best equipped, and most impressive quartz stamp mill in the gold regions of the Colorado Territory, known as the Black Hawk Mill, said mill being located in the heart of Black Hawk Point; and,

(4) Because Lee, Judd, and Lee were determined and committed to ensuring the community surrounding their mill would be known as Black Hawk Point and not Enterprise, they became the subscribers or benefactors for Dillingham to have a lithograph produced of his crayon sketch which would be entitled "View of Black Hawk Point".
Being astute and sagacious businessmen Lee, Judd, and Lee realized the significant marketing value and influence just such a lithograph would have in advancing future investment and community growth within Black Hawk Point; and,

(5) Lee, Judd, and Lee instructed Dillingham to fashion a vignette at the bottom of the Black Hawk Point lithograph which although cryptic, would upon keen observation definitively reveal whom the artist subscribers were. Whereupon, Dillingham very cleverly and wittily designed a vignette which included an American Indian, an eagle, and a tiger, which devices symbolized the three (3) mills owned by Lee, Judd, and Lee; the Black Hawk, the Eagle, and the Tiger, all located within Black Hawk Point. Dillingham inscribed his work "Respectfully dedicated to the subscribers by the artist"; and,

(6) Lee, Judd, and Lee aptly instructed Dillingham to surmount the vignette with the Latin word "PERSEVERANDO" to establish certitude and make prominent to the general public that Black Hawk Point would persevere, push forward, and be preserved; and,

(7) Lee, Judd, and Lee wanted to admonish Pratt and Buell and their supports from hindering and impeding the future of Black Hawk Point, therefore they instructed Dillingham to include within the vignette the Latin phrase "NOLI ME TANGERE", which translates into do not meddle, or do not interfere, or do not tread on me; and,

(8) The admonishment from Lee, Judd, and Lee was heeded, for other than the egregious and affronting Pratt and Buell map, all forthcoming maps would signify Black Hawk Point or Black Hawk; and,

(9) John E. Dillingham's lithograph of Black Hawk Point met with rave reviews, becoming a focal marketing piece for Lee, Judd, and Lee as well as other business leaders in Black Hawk Point, bolstering growth, investment, and civic pride in the nascent community; and,

(10) On March 11, 1864, Black Hawk Point was incorporated as the City of Black Hawk, making Black Hawk the second oldest incorporated city in the State of Colorado. On April 19, 1864, the vignette on the Black Hawk Point lithograph served as the archetype and was ordained as the official corporate seal for the City of Black Hawk; and,

(11) Ordaining the vignette as the City seal was the second ordinance passed by the inaugural City Council thereby acknowledging the gratitude, respect, and admiration the citizens of Black Hawk held for William L. Lee, Dr. Frederick H. Judd, and Mylo Lee; and,

(12) From time to time since 1862, extraneous forces have sought to hinder and impede or criticize and condemn, what is in the best interest of the City of Black Hawk; and,

(13) The indomitable spirit and unwavering pride and commitment that existed in Black Hawk from its establishment as a mining camp is as prevalent today as it was at that time; and,

(14) The City of Black Hawk now desires to admonish, in true historical and traditional Black Hawk character, any future extraneous forces from attempting to hinder or impede what is in the best interest of the City of Black Hawk.

(b) Corporate seal declared. A seal, the impression of which is described as follows: on the right, an Indian with a spear, war shield and club, with a tiger crouched behind; on the left, an eagle grasping the American shield and a sprig of laurel; in the center, a stream of water with a quartz mill on the left bank and moun-
tains in the background; the whole surmounted by the inscription "City of Black Hawk, Colorado," and the Latin word "PERSEVERANDO" shall surmount the devices and the Latin phrase "NOLI ME TANGERE" shall be beneath the devices, and the same is hereby is declared to be the seal of the City. (Ord. Pg. 36, April 19, 1864; Ord. 2017-8 §1)

Secs. 1-112—1-130. Reserved.

ARTICLE VII

Unclaimed Property

Sec. 1-131. Purpose.

The purpose of this Article is to provide for the administration and disposition of unclaimed property which is in the possession of or under the control of the City. (Ord. 92-16 §1)
Sec. 1-132. Definitions.

Unless otherwise required by context or use, words and terms shall be defined as follows:

Owner means a person or entity, including a corporation, partnership, association, governmental entity other than the City, or a duly authorized legal representative or successor in interest of same, which owns unclaimed property held by the City.

Unclaimed property means any tangible or intangible property, including any income or increment derived therefrom, less any lawful charges, that is held by or under the control of the City and which has not been claimed by its owner for a period of more than one (1) year after it became payable or distributable. Unclaimed property shall include any lost or abandoned property, not in the lawful custody of any other person or court, that is held by or under the control of the City. (Ord. 92-16 §2; Ord. 94-1 §1)

Sec. 1-133. Procedure for disposition of property.

(a) Prior to disposition of any unclaimed property having an estimated value of fifty dollars ($50.00) or more, the City Clerk shall send a written notice by certified mail, return receipt requested, to the last known address, if any, of any owner of unclaimed property. The last known address of the owner shall be the last address of the owner as shown by the records of the City department or agency holding the property. The notice shall include a description of the property, the amount or estimated value of the property and, when available, the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may make inquiry of or claim the property. The notice shall also state that if the owner fails to provide the City Clerk with a written claim for the return of the property within sixty (60) days of the date of the notice, the property shall become the sole property of the City and any claim of the owner to such property shall be deemed forfeited.

(b) Prior to disposition of any unclaimed property having an estimated value of less than fifty dollars ($50.00) or having no last known address of the owner, the City Clerk shall cause a notice to be published in a newspaper of general circulation in the City. The notice shall include a description of the property, the owner of the property, the amount or estimated value of the property and, when available, the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may make inquiry of or claim the property. The notice shall also state that if the owner fails to provide the City Clerk with a written claim for the return of the property within sixty (60) days of the date of the publication of the notice, the property shall become the sole property of the City and any claim of the owner to such property shall be deemed forfeited. When the unclaimed property constitutes lost or abandoned property, if the identity of the owner of such property is not known or ascertainable, the published notice shall generally describe the property and require the owner to specifically describe the property or provide sufficient proof of ownership prior to distribution.

(c) If the City Clerk receives no written claim within the above sixty-day claim period, the property shall become the sole property of the City and any claim of the owner to such property shall be deemed forfeited.

(d) If the City Clerk receives a written claim within the sixty-day claim period, the City Clerk shall evaluate the claim and give written notice to the claimant within ninety (90) days thereof that the claim has been accepted or denied in whole or in part. The City Clerk may investigate the validity of a claim and may request further supporting documentation from the claimant prior to disbursing or refusing to disburse the property.
(e) In the event that there is more than one (1) claimant for the same property, the City Clerk may, in the City Clerk's sole discretion, resolve said claims or may resolve such claims by depositing the disputed property with the registry of the District Court in an interpleader action.

(f) In the event that all claims filed are denied, the property shall become the sole property of the City and any claim of the owner of such property shall be deemed forfeited.

(g) Any legal action filed challenging a decision of the City Clerk shall be filed pursuant to Rule 106 of the Colorado Rules of Civil Procedure within thirty (30) days of such decision or shall be forever barred. If any legal action is timely filed, the property shall be disbursed by the City Clerk pursuant to the order of the court having jurisdiction over such claim.

(h) The City Clerk is authorized to establish and administer procedures for the administration and disposition of unclaimed property consistent with this Article including compliance requirements for other municipal officers and employees in the identification and disposition of such property. (Ord. 92-16 §3)

Secs. 1-134—1-150. Reserved.

ARTICLE VIII

Official Newspapers

Sec. 1-151. Legislative findings and purpose.

The City Council determines that "official newspapers" need to be designated for the publication of the City's legal notices. The City further finds that, as a home rule municipality organized and existing pursuant to Article XX of the Colorado Constitution, and pursuant to the City's Home Rule Charter, the City is authorized to designate official newspapers, and legislate regarding the publication requirements for legal notices of the City. The City Council specifically finds that the publication of legal notices as set forth in this Article is a matter of purely local concern. The designation of official newspapers will also clarify the duties of the City Clerk, as well as notify the citizens of the City of the newspapers in which legal notices may be found. Greater publication for the City's legal notices may be achieved through the designation of official newspapers. (Ord. 92-34 §1; Ord. 2004-03 §1)

Sec. 1-152. Definitions.

As used in this Article, the following terms shall have the following meanings:

**General circulation** is a term to describe the character of the newspaper as one (1) of general, not special or limited, circulation; it describes a newspaper which contains items of general interest to the public, such as news of political, religious, commercial or social affairs. Such terms will not include a mere advertisement sheet or a newspaper restricted or devoted exclusively to some particular trade, calling or branch of industry.

**Legal notice** means any notice or other written matter required to be published in a newspaper by the Charter or ordinances of the City or by any applicable state law.

**Newspaper** means any daily, triweekly, semiweekly or weekly newspaper as defined in Section 24-70-102, C.R.S.

**Publish, published or publication** means to make public; to circulate; to make known to the people or the public in general, printing or otherwise reproducing copies of something, together with distributing those copies in such a manner as to make their contents easily accessible to the general public. (Ord. 92-34 §2; Ord. 94-1 §1; Ord. 2004-03 §1)
Sec. 1-153. Designation of official newspapers.

Except as otherwise provided in this Article, the newspapers known as The Weekly Register-Call, The Mountain-Ear and the Gilpin County News shall be the official newspapers for the publication of legal notices for the City. The City Clerk shall be authorized to determine in which official newspaper to public legal notices of the City based on the best interests of the City and its residents. (Ord. 92-34 §3; Ord. 2004-03 §1; Ord. 2005-22 §1)

Sec. 1-154. Discontinuance of official newspapers.

In the event that The Weekly Register-Call, The Mountain-Ear or the Gilpin County News ceases to be published, the Board of Aldermen, by resolution, may select a replacement newspaper. (Ord. 92-34 §4; Ord. 2004-03 §1; Ord. 2005-22 §1)

Sec. 1-155. Alternative publication provision.

In the event that circumstances render the publication of legal notices in The Weekly Register-Call, The Mountain-Ear or the Gilpin County News impracticable or otherwise ineffective, the City Clerk may publish any legal publication in an alternative newspaper of general circulation. The City Clerk shall determine which newspaper adequately satisfies the City's needs for accurate, timely and reliable publication at a competitive or reasonable publication cost. (Ord. 92-34 §5; Ord. 2004-03 §1; Ord. 2005-22 §1)

Sec. 1-156. Publication in Gilpin County not required.

(a) Notwithstanding the provisions of Section 24-70-103, C.R.S., and based on the City Council's findings that publication of legal notices as set forth in this Article is a matter of purely local concern, or printed in whole or in part within the limits of the County or the City for purposes of the publication of those notices specified in Subsection (b) below. However, the official newspapers of the City selected by the Board of Aldermen shall be newspapers of general circulation in the City.

(b) The following legal notices of the City may be published in an official newspaper of the City as set forth in Section 1-153, regardless of whether said official newspaper is published or printed in whole or in part within the limits of the County or the City:

1. Notices for unclaimed property pursuant to Article VII of Chapter 1 of this Code;
2. Notices of public hearings on land use applications pursuant to Chapters 15, 16 and 17 of this Code;
3. Any required publication of ordinances pursuant to Article II, Section 15 of the City's Home Rule Charter; and
4. Any other legal notice that involves matters of purely local concern. (Ord. 2004-03 §1)

Secs. 1-157—1-190. Reserved.

ARTICLE IX

Public Improvements by Contract

Sec. 1-191. Public improvements by contract; requirement of public bids for public improvement projects in excess of $50,000.

(a) Pursuant to Article VIII, Section 7 of the Home Rule Charter, all work done by the City in the construction of works of public improvement of fifty thousand dollars ($50,000.00) or more shall be done by contract to the lowest responsible bidder on open bids after ample advertisement, excluding the repair and replacement of rock walls within the City.
If no bids are received or if, in the opinion of the City Council, all bids received are too high, the City may enter into negotiations concerning the contract. No negotiated price shall exceed the lowest responsible bid previously received. The City is not required to advertise for and receive bids for such technical, professional or incidental assistance as it may deem wise to employ in guarding the interest of the City against the neglect of contractors in the performance of such work. The City is not required to advertise or receive bids for the repair and replacement of rock walls within the City.

(b) Pursuant to Article VIII, Section 7 of the Home Rule Charter of the City of Black Hawk, the City is further authorized, if determined necessary based on the complexity or specialized nature of a particular project, to utilize a design-build or guaranteed maximum price (also known as a "GMP" or design-assist) process based on criteria developed by the City to assure that bidding contractors possess the unique qualifications necessary for such a project based on project specific criteria developed by the City. Such a competitive selection process shall include the following process:

(1) General. Contracts for the construction, reconstruction or remodeling of general public improvements may be let through a "Design-Build" or "GMP" process as an alternative to those processes set forth in subsection (a) of this Section 1-191 if the City determines its best interests are served by the use of such an alternative competitive selection process. Subject to any requirements and limitations provided for in this section, the City Manager or the City Manager's designee shall be responsible for determining and administering the competitive "Design-Build" or "GMP" selection process and project delivery method appropriate for construction of each such improvement. For purposes of this Section 1-191(b), a "Design-Build" contractor shall be responsible for the design and construction of the general public improvement for which the process is utilized.

(2) Contractor Selection/Design Build or GMP. The City may utilize a competitive selection process by means of a fair, open and free competition using a Design-Build or GMP process. At a minimum, any competitive Design-Build or GMP selection process shall include the following:

a. A written solicitation adequate to notify potential qualified contractors, subcontractors and suppliers of the nature of the work opportunity, including a general description of the contemplated scope of the project work, the anticipated method of project delivery, and a recitation of the significant standards and legal and technical requirements applicable to the project work. Said solicitation shall be published at least once in a manner calculated to obtain the best representation of qualified bidders in the Denver metropolitan area, and in addition, the City Manager, or his designated representative, may solicit bids from responsible prospective contractors;

b. A written description of the competitive "Design-Build" or "GMP" selection procedure the City will utilize to award a contract for the project work; such description to include: a recitation of any responsiveness requirements applicable to each submission, a listing of the significant selection procedure milestones and deadlines impacting submissions, a description of the minimum qualifications required, including all applicable prequalification rules and regulations, and a discussion of any other requirements necessary to deliver a complete and responsive submission to the department's solicitation;
c. A written statement of the criteria and other factors to be used by the City in evaluating each responsive submission; such evaluation factors shall include, but shall not be limited to: proposed fees (including general conditions and markup), expenses or cost saving considerations, as appropriate to each project; ability of professional personnel; past performance on similar projects; ability to meet time and budget requirements; recent, current, and projected workloads of the firm; and as applicable, the safety record, bonding capacity, and financial stability of each candidate; and concept of the project. The statement will also include a brief narrative describing the review, evaluation, selection and, as applicable, the contract negotiation process; and

d. A written notification of selection, ranking for negotiation or rejection issued to each entity making a submission in response to the City's solicitation.

e. The City of Black Hawk reserves the right to enter into negotiations with a contractor pursuant to the prequalification process, or to reject all proposals, and to waive any irregularities or informalities. Nothing in the provisions of this subsection (b) of Section 1-191 shall be deemed to commit the City of Black Hawk to award a contract. (Ord. 98-32 §1; Ord. 99-21 §1)

Sec. 1-192. Public improvements by contract; contracts less than $50,000.

For contracts of public improvements of less than fifty thousand dollars ($50,000.00), excluding the repair and replacement of rock walls within the City. No contract shall be awarded for a project under this Section 1-192 until the City Council has considered and approved the contract. (Ord. 98-32 §1; Ord. 99-21 §1)

Secs. 1-193—1-200. Reserved.
ARTICLE X

Community Restoration and Preservation Fund Guide to Programs

Sec. 1-201. City of Black Hawk Community Restoration and Preservation Fund Guide to Programs.

The City of Black Hawk Community Restoration and Preservation Fund Guide to Programs (the "Grant Program") shall be implemented by the City Council by resolution. Any resolution in effect as of the date of the adoption of this Article is hereby ratified in its entirety. (Ord. 2006-5 §1)

Sec. 1-202. Completion bond required.

(a) Application. No planning or building plans for any project financed in whole or in part by funds from the Grant Program shall receive final approval from the City unless the owner of the property files a completion bond with the City in a sum sufficient to cover one hundred percent (100%) of the estimated project costs. The completion bond may be in the form of cash, a letter of credit from an F.D.I.C. insured financial institution in a form acceptable to the City, or a corporate surety bond in a form acceptable to the City. A building permit shall not be issued by the City until such time as the completion bond is filed with the City Clerk.

(b) Bond requirements.

(1) Irrevocable letters of credit are acceptable when the following criteria are met:

a. The letter of credit shall be from a Colorado bank or savings institution. Said bank or savings institution may be asked by the City to provide proof of financial stability.

b. The irrevocable letter of credit shall conform to the standard City form which is on file in the City Clerk's office. All documents shall be approved by the City Attorney.

c. The letter of credit shall be for a minimum period of two (2) years.

d. Partial releases or reductions in the initial amount of the letter of credit will only be allowed as major work items are completed and accepted by the City. A new letter of credit shall be executed when partial releases are approved with such amounts being approved by the City Manager or his or her designee. The owner may apply to the City Council for the purposes of defining the amount of a partial release when a disagreement occurs with the City Manager or his or her designee. Any decision of the City Council regarding such application for partial releases shall be final.

e. The owner shall notify the City of the need to extend the expiration date of the letter of credit no less than sixty (60) days in advance of the expiration date. If the letter of credit is not renewed or extended within said sixty-day period, the City shall be entitled to draw upon the letter of credit in the full principal amount thereof.

(2) Corporate surety bonds are acceptable when the following criteria are met:

a. The surety bond shall be from a responsible company licensed to do business in Colorado. Said company may be asked by the City to provide proof of financial stability.

b. The surety bond shall conform to the standard City form which is on file in the City Clerk's office. All documents shall be approved by the City Attorney.
c. The surety bond shall remain in force for the duration of the development project, plus a maintenance period of not less than two (2) years approved by the City.

d. The bond shall provide that at least thirty (30) days' prior written notice of intention not to renew, cancellation or material change be given to the City by filing the same with the City Clerk.

(c) Completion of work and extensions.

(1) An owner of the property must complete within one year (365 days) of the issuance of a building permit all exterior work (such as, but not limited to, the exterior of the building, landscaping, paving driveways and parking lots, completing drainage and utility improvements, etc.) in a manner which complies with the approved planning and building plans. If such exterior work is not completed within one (1) year, plus any approved extension, from the date of issuance of the building permit and in compliance with all approved site plans and approved building plans, the cash deposit shall be retained, the letter of credit shall be drawn upon or the surety bond shall be collected upon by the City, which may complete all required work utilizing the funds so retained or drawn, or use the same funds to demolish the unfinished structure and restore the property.

(2) The owner may submit a letter to the City Manager or his or her designee requesting one (1) or more extensions of up to six (6) months each to complete the required work. The extension requests must be submitted in writing no less than sixty (60) days in advance of the expiration date of the original three-hundred-sixty-five-day period or a previously granted extension period. The City Council shall be notified by the City Manager of any extension request. Following notification of the City Council, the City Manager or his or her designee may grant the extension for good cause shown by the owner.

(d) Default. When an owner defaults and the required work is not completed to the City's satisfaction, the City, at its option, may enter onto the owner's property either utilizing its own employees or utilizing agents and/or contractors retained for that purpose and, utilizing the monies retained from a cash deposit, drawn on a letter of credit or collected from the surety bond, complete such work as it deems necessary to complete the project improvements or at a minimum to take measures that will restore/reclaim the property. Any cost associated with such work which is in excess of the security or collateral above described shall be billed to the owner and, if not paid within one hundred twenty (120) days, the outstanding bill may be collected in the manner provided by Section 31-20-105, C.R.S., or any other means provided by law. No additional plans or design review will be processed by the City and no building permits will be issued when an owner has not yet satisfied the provisions set forth above. (Ord. 2006-5 §1)

Sec. 1-203. Sale or transfer of property for which a grant was awarded.

(a) Legislative determination and purpose.

(1) The City Council finds and determines that the passage of HB 04-1381 amending Section 12-47.1-1202(3)(j), C.R.S., allows for grants to be awarded in excess of fifty thousand dollars ($50,000.00), so long as the grant recipient enters into an agreement with the City to repay the grant upon the sale or transfer of the property.
(2) The City further finds and determines that the term sale or transfer is not defined within the meaning of the amendment to Section 12-47.1-1202(3)(j), C.R.S., but that the intent of the legislation was to prevent residential property owners from becoming unjustly enriched or from unduly profiting from using funds from the Grant Program to restore properties within the City.

(3) The City Council therefore finds and determines that the definition of the term sale or transfer and the exemptions from the definition of the term sale or transfer set forth below are consistent with the legislative objectives of Section 12-47.1-1202(3)(j), C.R.S.

(b) Sale or transfer defined. The term sale or transfer within the meaning of Section 12-47.1-1202(3)(j), C.R.S., shall mean any sale, assignment or conveyance of all or a portion of the residential property that has received a grant within the preceding five (5) years that is not exempt from the term sale or transfer as set forth in Subsection (c) below.

(c) Exemptions. Any conveyance of property for which a documentary fee is not imposed pursuant to Section 39-13-104, C.R.S., shall be exempt from the term sale or transfer for purposes of imposing the obligation to repay on a pro rata basis the grant amount within five (5) years of the date the grant was awarded. Provided, however, the five-year term of the repayment obligation set forth in Section 12-47.1-1202(3)(j), C.R.S., shall continue to apply to the residential property for which the grant was awarded following an exempt conveyance in the event a subsequent sale or transfer occurs. (Ord. 2006-5 §1)

Secs. 1-204—1-209. Reserved.

ARTICLE XI

Disconnection of Territory from the City

Sec. 1-210. Disconnection of territory from the City.

(a) Disconnection following property owner petition.

(1) Disconnection of territory from the City may only be accomplished for land upon or contiguous to a boundary of the City and with approval by the City Council pursuant to hearing. No property may be disconnected if it has been platted into lots or blocks unless such lots and blocks are vacated by the City Council. Upon receipt by the City Clerk of a petition for disconnection, the City Clerk shall refer the petition to the City Council for consideration at its next regular City Council meeting, provided such petition is submitted at least ten (10) days prior to such meeting. In the event that City Council gives preliminary approval of disconnection, a hearing shall be set not less than thirty (30) days after such preliminary approval.

(2) At the time of hearing, the City Council shall receive staff reports and comments from those in favor and against disconnection. A decision to disconnect shall only be approved by a majority vote of the entire City Council. Disconnection may only be finalized by ordinance. Petitioners for disconnection shall pay all costs of disconnection, including, but not limited to, applicable election costs, if any, and the City's professional fees.

(b) Disconnection following City initiated application.

(1) Disconnection of territory from the City may only be accomplished for land upon or contiguous to a boundary of the City and
with approval by the City Council pursuant to a hearing. No property may be disconnected if it has been platted into lots or blocks unless such lots and blocks are vacated by the City Council. Upon receipt by the City Clerk of a City-initiated application for disconnection, the City Clerk shall refer the application to the City Council for its consideration at its next regular City Council meeting, provided such petition is submitted at least ten (10) days prior to such meeting. In the event that City Council gives preliminary approval of disconnection, a hearing shall be set not less than thirty (30) days after such preliminary approval.

(2) At least twenty (20) days prior to the hearing, the City Clerk shall mail notice of the application and the hearing to all property owners of record and special districts within the area under consideration for disconnection and to Gilpin County. At least twenty (20) days prior to the hearing, the City Clerk shall conspicuously post notice of the application and the hearing on the territory.

(3) At the time of hearing, the City Council shall receive staff reports and comments from any property owner, special district representative, County representative, or member of the public in favor of or against disconnection. A decision to disconnect shall only be approved by a majority vote of the entire City Council. Disconnection may only be finalized by ordinance, and the disconnection ordinance shall specify that the zoning placed on the territory by the City remains in force and effect after disconnection unless and until changed by the County. (Ord. 2017-6 §1)

Sec. 1-211. Contents of petition or application.

A petition or application for disconnection of territory shall contain the following:

(a) A legal description of the territory sought to be disconnected;

(b) A statement that the territory is located upon or adjacent to the border of the City;

(c) A statement that no part of the territory has been duly platted into lots and blocks or, if platting of lots and blocks has occurred, a statement that petitioner or applicant seeks vacation of said lots or blocks as part of the disconnection process;

(d) A statement that all taxes or assessments lawfully due upon the land, up to the time of the filing of the petition, have been fully paid;

(e) A statement indicating whether the City has maintained streets, lights, or other public utilities through or adjoining the territory and, if so, for how long. (Ord. 2017-6 §1)

Sec. 1-212. Disconnection by ordinance.

(a) To approve disconnection, whether by property owner petition or by City initiated application, City Council must find that all of the following conditions exist:

(1) The best interests of the City will not be prejudiced by the disconnection of such territory.

(2) The territory is not urban and cannot, in the foreseeable future, be urbanized.

(3) The territory cannot be reasonably integrated with the City.

(4) Urban services cannot be reasonably extended to serve the territory.

(5) Disconnection will not create a hardship or impairment to Gilpin County or any special district.
(b) The disconnection ordinance shall specify that the zoning placed on the territory by the City remains in force and effect after disconnection unless and until changed by the County.

(c) Immediately upon adoption of a disconnection ordinance, the City Clerk shall file with the Gilpin County Clerk and Recorder two (2) certified copies of the disconnection ordinance. The County Clerk and Recorder shall file the second certified copy with the division of local government in the Department of Local Affairs, as provided by Section 24-32-109, C.R.S.

(d) Disconnected territory is not thereby exempt from the payment of any taxes lawfully assessed against it for the purpose of paying any indebtedness lawfully contracted by the City while such territory was within the City limits that remains unpaid and for the payment of which said territory could be lawfully taxed. The County Treasurer shall pay over to the City all moneys collected by or on account of such tax, to be applied only to the payment of such indebtedness. (Ord. 2017-6 §1)
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ARTICLE I

Elections

Sec. 2-1. Election tie for Alderman.

Whenever the judges of an election certify to the Mayor such facts stating the occurrence of a tie in the election of an Alderman, the Mayor shall order a run-off election to be held within forty-five (45) days of the date the tie is so certified to the Mayor. (Ord. 2008-14 §1)

Sec. 2-2. Election tie for Mayor.

Whenever the judges of an election certify to the Board of Aldermen such facts stating the occurrence of a tie in the election of the Mayor, the Board of Aldermen shall order a run-off election to be held within forty-five (45) days of the date the tie is so certified to the Board of Aldermen. (Ord. 2008-14 §2)

Sec. 2-3. Contest of election results.

(a) Whenever an election for Mayor is contested by an eligible elector of the City, the Board of Aldermen shall conduct a hearing on the merits and adjudicate the contest. An eligible elector contesting the election of Mayor shall serve a Notice of Contest to the Board of Aldermen within thirty (30) days after the date of any mayoral election. The Notice of Contest shall state the nature and grounds of the contest. The contesting party shall serve upon the contestee a copy of the Notice of Contest within five (5) days after the Notice of Contest is filed with the Board of Aldermen.

(b) The Board of Aldermen shall hold a public hearing, after proper public notice, to hear testimony and receive evidence concerning the nature of the contest of the election of the Mayor. The Board of Aldermen may conduct the hearing in whatever manner it deems appropriate. The Board of Aldermen shall render a written decision within fourteen (14) days after the hearing adjourns, and shall order the City Clerk to cause to be published such decision in a newspaper of general circulation in the City. (Ord. 94-1 §1)

Sec. 2-4. Affidavit of intent for write-in candidates for municipal office.

(a) No write-in vote for any municipal office shall be counted unless an affidavit of intent has been filed with the City Clerk by the person whose name is written not later than sixty-four (64) days before the day of the election; the affidavit of intent shall indicate that such person desires the office and is qualified to assume the duties of that office if elected.

(b) In the event that the only matter before the voters in an election is the election of persons to office, and if, at the close of business on the sixty-third day before the election there are not more candidates than offices to be filled at such election, including candidates that have filed affidavits of intent pursuant to Subsection (a) above, the City Council may by resolution direct the City Clerk to cancel the election and declare the candidates elected to office. (Ord. 97-34 §1; Ord. 2015-45, §1)

Sec. 2-5. Nomination petitions; circulation; required signatures.

Nomination petitions for candidates for municipal office may be circulated and signed beginning on the ninety-first day and ending on the seventy-first day prior to the day of election. Each petition shall be signed by registered electors as follows:

(a) Petitions for the nomination of a candidate for the office of Mayor or Alderman shall be signed by at least ten (10) registered electors with the City.

(b) Any registered elector residing in the City may sign an unlimited number of petitions for nomination of a candidate for the office of Mayor and Alderman. (Ord. 2003-8 §1; Ord. 2015-45, §2)
Sec. 2-6. Challenging ballots cast by mail.

(a) Legislative findings. The City Council hereby finds as follows:

(1) The City has traditionally and successfully used a mail ballot election for its municipal elections, and such a mail ballot process has resulted in a high voter turn-out in municipal elections.

(2) Article III, Section 2 of the Home Rule Charter adopts by reference the Colorado Municipal Election Code of 1965, Article 10 of Title 31, C.R.S. (the "Municipal Election Code"), and provides that the Municipal Election Code shall be applicable in all municipal elections.

(3) Article III, Section 3 of the Home Rule Charter provides that the City Council is to make the determination regarding any contested municipal election.

(4) The City Council recognizes that, if it made such a final determination in a City Council election, such a process may appear not to be impartial, and the City Council therefore desires to delegate its final decision-making authority regarding the qualifications of registered electors in a municipal election to the City Clerk in the City Clerk's capacity as the designated election official of the City.

(5) Pursuant to Section 1-7.5-110, C.R.S., which addresses a mail ballot election under the Uniform Election Code of 1992, Section 1-1-101, et seq., votes cast pursuant to Article 7.5 of Title 1, C.R.S., may be challenged "pursuant to and in accordance with law."

(6) The City Council finds and determines that no acceptable process for challenging a voter's eligibility to vote in a mail ballot election is found in the Colorado Municipal Election Code or in Article 7.5 of Title 1, C.R.S., because the Municipal Election Code does not have a process for challenging registered electors that is specifically applicable to a municipal mail ballot election.

(7) Pursuant to the Municipal Election Code, to be entitled to register to vote at a municipal election, a person must be a citizen of the U.S. and must reside in the municipal election precinct for the thirty (30) days immediately preceding the election.

(8) Article II, Section 4, of the Home Rule Charter defines residency as an individual's "primary permanent domicile" as determined by activities to establish domicile, including the residence at which the individual spends a majority of the year, the location and use of other residences and the address used by the individual for identification, car registration, driver's license, state and federal tax returns and regular mail.

(9) The City Council desires to provide a fair and impartial process, subject to judicial review, that addresses the validity of the qualifications of registered voters within the City in a municipal mail ballot election when the qualifications of a registered elector has been called into question.

(10) As a home rule municipality, and pursuant to the authority under the Constitution and pursuant to the Home Rule Charter, the City is authorized with respect to elections regarding local and municipal matters to adopt, by ordinance, its own method for challenging votes cast by mail.
(11) The City Council further finds that the process for challenging voters contained within the Municipal Election Code contemplates a polling place election and is therefore inapposite to a mail ballot election because the challenge process within the Municipal Election Code at Section 31-10-1101, et seq., C.R.S., requires tendering a written oath to a voter who is present at the polling place.

(12) The City Council therefore desires to adopt a process for challenging the qualifications of a registered elector in a City mail ballot election in which the voter is not present at the polling place to tender an oath upon such a challenge.

(13) The City Council finds that such a challenge process must permit election results to be available in a timely manner, and must be fair and impartial.

(14) The City Council finds that it is imperative that the City's election process be trustworthy, accurate and reliable, and that the City's processes assure that only eligible voters are permitted to vote, and therefore adopts this Section 2-6 of this Code.

(b) In any City election conducted by mail ballot and not coordinated with the County, a voter may be challenged as unqualified to vote pursuant to this Section.

(c) A challenge may be initiated either by an election official or a properly certified election watcher ("challenger"). The process for appointing an election watcher shall be as set forth in Section 31-10-602, C.R.S., and Section 2-7 of this Article. The challenger shall sign a written challenge on a form provided by the City Clerk, setting forth the reason for the challenge.

(d) A challenge shall be initiated at the time the mail ballot packet, enclosed in the sealed return envelope, is received and turned over to an election official for tabulation on or before election day. The challenge shall be initiated prior to opening the return envelope, except that in challenging a voter who is voting for the first time, registered to vote by mail, did not provide the required identification upon registration and has been asked to submit appropriate identification along with his or her ballot, it may be necessary to open the sealed return envelope only as follows. The names of such voters shall be identified on the list of registered voters provided by the County Clerk and Recorder. In such cases, the election official may open the return envelope only to retrieve the requested identification. If the required identification cannot be found in the return envelope, the election official may open the secrecy sleeve or secrecy envelope only for the purpose of retrieving the required identification in an effort not to disenfranchise the voter. In such case, the election official shall not read or disclose the contents of the ballot.

(e) The bases for initiating a challenge shall include, but not be limited to, the following:

(1) That the voter is a first-time voter in a City election who registered to vote by mail by any means and has not yet provided identification as is required to authenticate his or her registration;

(2) That the voter is a person who, upon the election official's or watcher's sworn information and belief, no longer keeps his or her "primary permanent domicile" within the City as determined in Article II, Section 3 of the City's Home Rule Charter; or

(3) That the voter fails to meet any other applicable requirement to be meet any other applicable requirement to be eligible to vote in the election.

(f) Challenged ballots shall not be counted unless and until the voter's eligibility to vote is confirmed pursuant to this Section.
(g) The challenged voter's registration shall first be reviewed according to the process for validating provisional ballots, which as of the date of the adoption of this Section is currently set forth in the Secretary of State's Election Rule 26, except that the validation of the voter's registration shall occur within three (3) days following the election. If the voter's registration cannot be validated in that time, the vote shall be rejected.

(h) If the voter's registration is validated and the challenge concerns the voter's actual "primary permanent domicile" or failure of the voter to meet any other eligibility requirement, the challenge shall proceed as follows:

(1) The City Clerk shall set a time and place for a hearing to be held no later than three (3) days after the election. The City Clerk shall provide the voter and the challenger not less than twenty-four (24) hours' notice of the hearing.

(2) The City Clerk shall conduct the hearing and receive testimony and evidence submitted under oath by the challenger and the voter, if the voter chooses to appear and offer testimony or evidence. The challenger shall bear the burden of proof, and should the challenger fail to appear for the hearing, the challenge shall be summarily dismissed and the ballot counted.

(i) In determining a voter's "primary permanent domicile," the City Clerk shall consider each of the following factors:

(1) The residence at which the voter spends or will spend the majority of the year;

(2) The location and use of other residences;

(3) The address used by the voter for identification;

(4) The address used by the voter for motor vehicle registration;

(5) The address used by the voter for his or her driver's license;

(6) The address used by the voter for state and federal tax returns;

(7) The address used by the voter for regular mail;

(8) Whether the voter is maintaining a home or domicile elsewhere;

(9) Whether the voter was absent from the City for any of the thirty (30) days immediately preceding the election, and whether the voter, while absent, had the intent of returning to the City;

(10) Whether the voter regards the City as his or her home; and

(11) Any other activities of the voter that, in the City Clerk's determination, tend to establish his or her primary permanent domicile.

(j) The City Clerk shall render a written decision no later than seventy-two (72) hours following the hearing.

(1) If the City Clerk finds sufficient evidence to support the allegation in the challenge, the challenge shall be affirmed and the ballot shall not be counted.

(2) If the City Clerk does not find sufficient evidence to support the allegations in the challenge, the challenge shall be denied and the ballot shall be counted.
(k) The City Clerk's decision shall be final. Any decision of the City Clerk may be appealed to the District Court pursuant to the accelerated process set forth in Section 31-10-1401 C.R.S., or, in the alternative, if applicable, any decision of the City Clerk may be subject to an election contest pursuant to Section 31-10-1301, et seq., C.R.S. (Ord. 2008-7 §1; Ord. 2008-9 §2)

Sec. 2-7. Requirements for poll watchers.

(a) Legislative findings. The City Council hereby finds as follows:

(1) Article III, Section 2 of the City of Black Hawk Home Rule Charter adopts by reference the Colorado Municipal Election Code of 1965, Article 10 of Title 31, C.R.S. (the "Municipal Election Code"), and provides that the Municipal Election Code shall be applicable in all municipal elections;

(2) Section 31-10-602, C.R.S., within the Municipal Election Code provides that each candidate for office, or interested party in the case of a ballot issue, is entitled to appoint one (1) person to act as a poll watcher in his or her behalf but does not contain any requirements for who may be appointed as a poll watcher;

(3) The City finds that as a home rule municipality, and pursuant to the authority under the Constitution and pursuant to the City of Black Hawk Home Rule Charter, it is authorized with respect to elections regarding local and municipal matters to adopt, by ordinance, its own requirements for the process and criteria for appointing poll watchers;

(4) The City Council further finds the process for naming poll watchers set forth in Section 31-10-602, C.R.S., within the Municipal Election Code, does not specify the qualifications of election watchers;

(5) The Secretary of State has promulgated rules for poll watchers under the Uniform Election Code, but said rules do not expressly apply to the City because it has adopted the Municipal Election Code by reference; and

(6) The City Council therefore desires to establish a process and criteria for appointing poll watchers in municipal elections and therefore adopts Section 2-7 of this Code.

(b) In any municipal election not coordinated with the County, each candidate for office, or interested party in the case of a ballot issue, shall be entitled to appoint one (1) person as a poll watcher to act in his or her behalf in every precinct in which he or she is a candidate or in which the issue is on the ballot.

(c) The candidate or interested party shall certify the names of the persons appointed as poll watchers to the City Clerk on forms provided by the City Clerk by the close of business on the Friday immediately preceding the election.

(d) Any person designated as a poll watcher by a candidate for office or interested party in the case of ballot issue shall be a registered elector of the State, and shall be subject to the following requirements:

(1) On election day, each poll watcher shall take an oath administered by one (1) of the election judges, affirming that he or she is a registered elector of the State, that his or her name has been submitted to the City Clerk as a poll watcher for this election, and that he or she will not in any manner make known to anyone the result of counting votes until the polls have closed;

(2) Neither a candidate nor members of his or her immediate family by blood or marriage to the second degree may be poll watchers for that candidate.
(e) Each poll watcher shall have the right to maintain a list of eligible electors who have voted, to witness and verify each step in the conduct of the election prior to the opening of the polls through the completion of the count and announcement of results, to challenge ineligible electors and to assist in the correction of discrepancies.

(f) Each poll watcher may be present at each stage of the election, including the receiving and bundling of the ballots received by the designated election official. Poll watchers may also be present during provisional ballot processing and may initiate challenges as more particularly described in Section 2-6 of this Article. (Ord. 2008-9 §1)

Secs. 2-8—2-20. Reserved.

ARTICLE II
Mayor and Board of Aldermen

Sec. 2-21. Attendance.

(a) If any member of the Board of Aldermen or the Mayor shall miss more than three (3) consecutive regularly scheduled City Council meetings in any calendar year or seventy-five percent (75%) of all regularly scheduled meetings in any calendar year without receiving authorization of a majority of the City Council for missing such regularly scheduled meetings, this shall be considered a failure of duties and may be cause for such Alderman or Mayor to be removed from office; except that such absence shall be excused for temporary mental or physical disability or illness as confirmed by written verification from a Colorado-licensed physician engaged in the current practice of medicine. Following such unauthorized absences, the City Clerk, at the request of the City Council, shall schedule a hearing at the next regular meeting of the City Council for the purpose of considering the removal of such Alderman or Mayor. Following such hearing, the City Council shall vote on whether to remove such Alderman or Mayor from office. The vacancy created by such a removal shall be filled as prescribed by law.

(b) If the number of Aldermen present at any Council meeting, whether such meeting is regular or special, is insufficient to constitute a quorum, the Aldermen may, by majority vote of those present, direct the Chief of Police to collect the absent Aldermen and bring them directly and without delay to the place of the meeting, or may continue the meeting. (Ord. 94-1 §1, Ord. 2008-4 §1)

Sec. 2-22. Executive sessions.

(a) The members of the Board of Aldermen may hold an executive session at a regular, special or emergency meeting for the purpose of considering the matters allowed by law:

(1) The purchase, acquisition, lease, transfer or sale of any real, personal or other property interest; except that no executive session shall be held for the purpose of concealing the fact that a member of the Board of Aldermen has a personal interest in such purchase, acquisition, lease, transfer or sale;

(2) Conferences with the City Attorney for the purposes of receiving legal advice on specific legal questions, or to discuss matters pertaining to anticipated or pending litigation against the City;

(3) Matters required to be kept confidential by federal or state law or rules and regulations;

(4) Specialized details of security arrangements or investigations;
(5) Determining positions relative to matters that may be subject to negotiations; and instructing negotiations (for purposes of this Subsection, those permitted into executive session may include, at the invitation of the Board of Aldermen, individuals involved in negotiation matters);

(6) All personnel matters except if the employee who is the subject of the session has requested an open meeting, or if the personnel matter involves more than one (1) employee, all of the employees have requested an open meeting; and

(7) Consideration of any documents protected by the mandatory nondisclosure provisions of the Open Records Act, codified under Section 24-72-201, et seq., C.R.S.

(b) No adoption of any proposed policy, position, resolution, rule, regulation or formal action shall occur at any executive session which is not open to the public. (Ord. 94-1 §1; Ord. 2001-15 §1)

Secs. 2-23—2-40. Reserved.

ARTICLE III

Officers and Employees

Sec. 2-41. City Manager.

(a) The City Manager shall be the chief administrative officer for all departments of the City. The City Manager shall have and exercise all the administrative powers vested in the City.

(b) The City Manager shall be selected solely on the basis of administrative qualifications with special reference to training and experience.

(c) The City Manager shall be appointed by and serve at the pleasure of the City Council for an indefinite period.

(d) The salary of the City Manager shall be fixed by the City Council, pursuant to resolution.

(e) The entire time and business interest of the City Manager shall be devoted to the management of the City's affairs, and the City Manager shall not, while in office, be an employee of, or perform any executive duty, for any person, firm, corporation or institution other than the City except where approved by the City Council. (Ord. 94-1 §1; Ord. 95-2 §1)

Sec. 2-42. Functions and duties, in general.

(a) The City Manager shall be responsible to the Mayor and the Board of Aldermen for the proper administration of all affairs of the City placed in the City Manager's charge.

(b) Subject to and except as otherwise provided by Charter, ordinance or the Employee Manual, the City Manager shall have the power to remove all officers and employees of the City, excepting the elected officers, municipal judges, the City Attorney and the subordinate employees of the City Attorney.

(c) All appointments made by the City Manager shall be without definite term. The City Council, or members of the City Council, may be involved in the selection process for department heads, provided that the City Manager makes the final decision to hire a department head.

(d) The City Manager shall have the power to suspend and discipline all employees, officers or department directors whom the City Manager is empowered to appoint, in accordance with the Employee Manual promulgated by the City Manager and approved by the City Council, except that discipline against department directors shall not be governed by the Employee Manual. (Ord. 94-1 §1; Ord. 95-2 §2; Ord. 97-39 §§1—3)
Sec. 2-43. Additional functions and duties.

The City Manager shall have the following additional functions and duties:

(1) To coordinate the administration and enforcement of all laws and ordinances of the City, save and except to the extent that the administration of such enforcement is confided to other City officials by law or by ordinance.

(2) To be responsible to the City Council for the administration of all departments and offices of the City, save and except the Municipal Court and the City Attorney.

(3) To issue such administrative regulations and outline such general administrative procedures applicable to areas and departments confided to the City Manager's supervision, in the form of rules which are not in conflict with the City Charter, laws of the State or the ordinances of the City.

(4) To prepare an annual budget estimate and submit the same to the City Council.

(5) To keep the City Council fully informed as to the financial condition and future needs of the City.

(6) To recommend to the City Council for adoption such measures, resolutions, acts and policies as the City Manager may deem necessary or desirable for the efficient and proper operation of the City and the performance of its functions.

(7) To supervise the purchase of all materials, supplies and equipment for which funds are provided in the budget. No purchase shall be made, contract let or obligation incurred for any item or service which exceeds the current budget appropriation without a supplemental appropriation by the City Council. No contract for new construction shall be let except by the City Council. The City Manager may issue such rules governing purchasing policies within the administrative organization as the City Council shall approve.

(8) To coordinate the activities of the various boards, commissions and committees of the City with the activities and policies of the City Council.

(9) To cause full and complete records to be kept of the governmental, proprietary and financial business of the City, including the maintenance of a system of accounts of the City which shall conform to any uniform system required by the City Council and to generally accepted principles and procedures of governmental accounting. The City Manager shall submit financial statements to the City Council monthly, or more often as the City Council directs.

(10) To prepare and submit to the City Council an annual report of the City's affairs, including a summary of the activities of each department.

(11) To propose for adoption by the City Council, at any time or from time to time, a plan of administrative organization of the City government, which plan shall be adopted by the City Council by resolution or ordinance.

(12) To prepare and submit to the City Council such reports as may be required by that body.

(13) To establish, by regulation, fees up to and including one thousand dollars ($1,000.00), to be charged for City services which are not services generally provided by the City unless such fees are otherwise set by ordinance or resolution adopted by the City Council.
(14) To sell surplus City property authorized by the City Council.

(15) To give to the proper department or officials ample notice of the expiration or termination of any franchises, contracts or agreements.

(16) To see that all terms and conditions imposed in favor of the City or its inhabitants in any public utility franchise, or in any contract, are faithfully kept and performed.

(17) To exercise and perform all administrative functions of the City that are not imposed by the Charter or ordinance upon some other official. Notwithstanding any other provisions in the Charter to the contrary, the City Manager may, in the event of an emergency and after prompt notification to the City Council, exercise complete administrative authority over any department, department head or City employee and all City-owned property. The City Manager shall determine when such emergency exists.

(18) To perform such other functions and duties as may be prescribed by Charter, ordinance or resolution of the City Council. (Ord. 94-1 §1; Ord. 95-2 §3)

Sec. 2-44. Delegation of authority.

(a) The City Manager shall have the authority to delegate to a deputy or assistant appointed by the City Manager, to the heads of departments, or to other officers or employees designated by the City Manager, such part of the power and authority vested in the City Manager by the Charter or this Code as the City Manager shall deem necessary and proper, at any time and from time to time.

(b) The City Manager shall have the further authority to delegate any power, jurisdiction or authority vested by the Charter, ordinance or by law in a City officer subordinate to the City Manager, to the deputy or assistant or to other officers or employees designated by the City Manager, at any time and from time to time. (Ord. 94-1 §1; Ord. 95-2 §4)

Sec. 2-45. Relationship of the City Council to the City Manager.

(a) The City Manager shall have the authority to recommend to the City Council for adoption such measures as the City Manager may deem necessary or expedient; and to attend City Council meetings with the right to take part in discussions but not to vote.

(b) The City Council and its members shall deal with that portion of the administrative service for which the City Manager is responsible solely through the City Manager, and neither the City Council nor any member thereof shall give orders to any subordinate officer or employee of the City either publicly or privately. Administrative service means and includes every department, officer, function and service for which or for whom the City Manager is responsible under the provisions of this Article.

(c) Directives issued by the City Council concerning policies or operations of the City Council affecting the administrative service of the City or directing the City Manager in the administration of the government of the City shall be made so as to direct the City Manager to accomplish the desired purposes, objectives or action. A majority of the City Council shall direct the City Manager to accomplish specific desired purposes, objectives or action, and not individual City Council members. (Ord. 94-1 §1; Ord. 95-2 §5)

Sec. 2-46. Acting City Manager.

The City Council may appoint or designate an acting City Manager during the period of vacancy in the office of City Manager. During
the absence of the City Manager from the City, the City Manager may appoint or designate an acting City Manager during the period of absence. In the event of a disability of the City Manager, the City Council may appoint or designate an acting City Manager during the absence of the City Manager. Such acting City Manager shall, while in such office, have all the responsibilities, duties, functions and authority of the City Manager. (Ord. 94-1 §1; Ord. 95-2 §7)

Sec. 2-47. Police Commission.

During the term of this Article, a Police Commission shall be established consisting of the City Manager, Chief of Police and the Board of Aldermen. The purpose of the Police Commission is to address issues which are common to the Police Department and management of the City. (Ord. 94-1 §1; Ord. 98-3 §1)

Sec. 2-48. Term of Aldermen

The term of an Alderman on the Police Commission shall last so long as the Alderman shall remain on the City Council. (Ord. 94-1 §1; Ord. 95-10 §1; Ord. 98-3 §2)

Sec. 2-49. Functions, duties and jurisdiction.

(a) The Police Commission may review matters of significance related to the Police Department.

(b) The City Manager shall report on matters of significance related to the Police Department to the Police Commission; however, nothing in this Subsection shall create within the Police Commission the authority to usurp the powers of the City Manager.

(c) The Police Commission may direct the City Manager to submit financial statements to the Police Commission quarterly or more often as it becomes necessary. (Ord. 94-1 §1; Ord. 94-17 §1; Ord. 95-6 §1; Ord. 95-10 §§2—4; Ord. 98-3 §3)

Sec. 2-50. Establishment of Streets and Roads Commission.

(a) During the term of this Article, a Streets and Roads Commission shall be established consisting of the City Manager, Public Works Director and Board of Aldermen.

(b) The term of an Alderman on the Streets and Roads Commission shall last so long as the Alderman shall remain on the City Council. (Ord. 94-1 §1; Ord. 95-10 §5; Ord. 98-3 §4)

Sec. 2-51. Functions and duties, in general.

(a) The Streets and Roads Commission may review matters of significance related to the maintenance, construction and safety of streets and roads within the City.

(b) The City Manager shall report on matters of significance related to the maintenance, construction and safety of streets and roads within the City to the Streets and Roads Commission; however, nothing under this Subsection shall create within the Streets and Roads Commission the authority to usurp the powers of the City Manager.

(c) The Streets and Roads Commission may direct the City Manager to submit financial statements to the Commission quarterly or more often as becomes necessary. (Ord. 94-1 §1; Ord. 95-10 §6; Ord. 98-3 §4)

Sec. 2-52. Establishment of Water Commission.

(a) The Mayor shall appoint two (2) members of the Board of Aldermen to be on the Water Commission. The Water Commission is to act as liaison between the City Manager, the Public Works Director and the City Council.
(b) The term of an Alderman on the Water Commission shall last so long as the Alderman shall remain on the City Council unless removed by the Mayor. When such Alderman ceases to serve as a member of the City Council or is removed from the Commission by the Mayor as provided herein, the Mayor shall, within thirty (30) days from the date the Alderman ceases to serve, appoint a new Commissioner from the Board of Aldermen. (Ord. 94-1 §1; Ord. 95-10 §7)

Sec. 2-53. Functions and duties, in general.

(a) The Water Commission may review matters of significance related to the maintenance, construction and safety of the water and sewer systems within the City and may advise and make recommendations of planning, policy, procedure, budget and other matters as determined by ordinance to the City Council, the City Manager and the Director of Public Works.

(b) The City Manager shall report on matters of significance related to the maintenance, construction and safety of water and sewer systems within the City to the Water Commission; however, nothing under this Subsection shall create within the Water Commission the authority to usurp the powers of the City Manager.

(c) The Water Commission may direct the City Manager to submit financial statements to the Commission quarterly or more often as becomes necessary. The Water Commission shall report to the City Council at each bimonthly regular Council meeting the status of the water and sewer systems in a manner directed by the City Council.

(d) The Water Commission shall oversee, direct, supervise and manage the City Water Board as established under Section 13-1 of this Code. (Ord. 94-1 §1; Ord. 95-10 §8)

Sec. 2-54. Establishment of Commissioner of Fire.

(a) The Mayor shall appoint one (1) member of the Board of Aldermen to be the Commissioner of Fire. The Fire Commissioner is to act as liaison between the Fire Chief, the City Manager and the Board of Aldermen.

(b) The term of the Fire Commissioner shall last so long as the City Council member shall remain on the Board of Aldermen, subject to annual review by the Mayor in May of each year. When the Fire Commissioner ceases to serve as a member of the Board of Aldermen, the Mayor shall, within thirty (30) days from the date the Commissioner ceases to serve, appoint a new Commissioner from the Board of Aldermen. (Ord. 94-31 §1)

Sec. 2-55. Functions, duties and jurisdiction.

(a) The Fire Commissioner may review matters of significance related to the Fire Department and may advise and make recommendations of policy, procedure, budget and other matters to the City Council and to the Fire Chief.

(b) The Fire Commissioner shall not dictate the appointment or removal of any City employee or interfere with or give direction on job-related functions to City employees.

(c) The Fire Commissioner may recommend to the City Council for adoption such measures, resolutions, acts and policies as the Fire Chief deems necessary or desirable for the efficient and proper operation of the City and the performance of the Fire Department.

(d) The Fire Commissioner shall keep the City Council fully informed as to the financial condition and future financial needs of the Fire Department and report to the City Council, at each bimonthly regular Council meeting, the status of the Fire Department in a manner acceptable by the City Council. (Ord. 94-31 §1)
Sec. 2-56. Establishment of Commissioner of Finance.

(a) The Mayor shall appoint one (1) member of the Board of Aldermen to be the Commissioner of Finance. The Finance Commissioner is to act as liaison between the City Manager, the Finance Director and the Board of Aldermen.

(b) The term of the Finance Commissioner shall last so long as the City Council member shall remain on the Board of Aldermen, subject to annual review by the Mayor in May of each year. When the Finance Commissioner ceases to serve as a member of the Board of Aldermen, the Mayor shall, within thirty (30) days from the date the Commissioner ceases to serve, appoint a new Commissioner from the Board of Aldermen. (Ord. 94-31 §1)

Sec. 2-57. Functions and duties, in general.

(a) The Finance Commissioner may review matters of significance related to the financial affairs of the City and may advise and make recommendations of planning, policy, procedure, budget and other matters to the City Council and to the City Manager.

(b) The City Manager shall report on matters of significance related to the financial affairs of the City to the Finance Commissioner; however, nothing under this Subsection shall create within the Financial Commissioner the authority to usurp the powers of the City Manager.

(c) The Finance Commissioner may direct the City Manager to submit financial statements to the Commissioner quarterly or more often as becomes necessary. The Finance Commissioner shall report to the City Council, at each bimonthly regular Council meeting, the status of the Finance Department in a manner directed by the City Council. (Ord. 94-31 §1)

Sec. 2-58. Establishment of Commissioner of Planning.

(a) The Mayor shall appoint one (1) member of the Board of Aldermen to be the Commissioner of Planning. The Planning Commissioner is to act as liaison between the Planning Director, the City Manager and the Board of Aldermen.

(b) The term of the Planning Commissioner shall last so long as the City Council member shall remain on the Board of Aldermen, subject to annual review by the Mayor in May of each year. When the Planning Commissioner ceases to serve as a member of the Board of Aldermen, the Mayor shall, within thirty (30) days from the date the Commissioner ceases to serve, appoint a new Commissioner from the Board of Aldermen. (Ord. 94-31 §1)

Sec. 2-59. Functions and duties, in general.

(a) The Planning Commissioner may review matters of significance related to the planning, historical and land use matters of the City and may advise and make recommendations of planning, policy, procedure, budget and other matters to the City Council and to the City Manager.

(b) The City Manager shall report on matters of significance related to the planning, historical and land use matters of the City to the Planning Commissioner; however, nothing under this Subsection shall create within the Planning Commissioner the authority to usurp the powers of the City Manager.

(c) The Planning Commissioner shall report to the City Council, at each bimonthly regular Council meeting, the status of the Planning Department in a manner directed by the City Council. (Ord. 94-31 §1)
Sec. 2-60. Compensation.

(a) Each member of the City Council shall be compensated during his or her term of office in the amount of six hundred fifty dollars ($650.00) for each month or portion thereof during his or her term of office. In addition to such compensation, each member of the City Council shall receive all insurance benefits afforded to full-time employees of the City, or in the alternative, any member of the City Council may choose to receive the cash equivalent of the above-referenced insurance benefits for each month or portion thereof during his or her term of office.

(b) The members of the City Council shall be entitled to participate in the City of Black Hawk retirement program benefits including the City's 401a and 457 programs in the same manner as afforded to full-time employees of the City of Black Hawk. In the alternative, such City Council members shall be entitled to receive the cash equivalent of such retirement benefit. The cash equivalent shall not exceed an amount based on the highest percentage afforded to a full-time employee of the City based upon the City Council stipend and the value of the health insurance benefit provided to such incumbent members of the City Council. (Ord. 98-13 §1; Ord. 2001-13 §1; Ord. 2013-57 §1)

Secs. 2-61—2-70. Reserved.

ARTICLE IV

Liability of Public Officials

Sec. 2-71. Official defined.

For the purpose of this Article, the term *official* shall include any elected and appointed officials of the City, and all employees of the City. (Ord. 85-1 §1; Ord. 94-1 §1)

Sec. 2-72. Defense of action.

The City shall pay the cost of defense for any official who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, to the extent allowed by law; provided that the City shall not pay the costs of defending its officials against a claim for punitive damages unless the City determines by resolution adopted at an open meeting by the City Council that it is in the public interest to defend the official against a claim for punitive damages. (Ord. 85-1 §4; Ord. 94-1 §1; Ord. 2001-15 §2)

Sec. 2-73. Indemnification.

Any official of the City who is liable for the payment of any claims or damages, by way of judgment or settlement, shall be entitled to indemnification by the City to the extent allowed by law; provided that the City shall not pay or settle any punitive damage claim against any official of the City unless the City determines by resolution adopted at an open meeting by the City Council that it is in the public interest to indemnify the official against a claim for punitive damages. (Ord. 85-1 §5; Ord. 2001-15 §3)

Sec. 2-74. City defenses.

Nothing in this Article shall be construed as waiving the City's defense of governmental immunity for any action brought against the City or its officials. (Ord. 85-1 §6)

Sec. 2-75. Conflict of interest.

Nothing in this Article or in any ordinance of the City or nothing in any agreement with the City Attorney shall be construed to require the City Attorney to provide legal services in any matter which would cause the City Attorney to be involved in a conflict of interest. (Ord. 85-1 §7)
ARTICLE V

Reserved

ARTICLE VI

Municipal Court

Sec. 2-121. Created.

A Municipal Court in and for the City is hereby established pursuant to and governed by the provisions of Article 10 of Chapter 13, C.R.S. (Ord. 82-3 §1)

Sec. 2-122. Jurisdiction and powers.

The Municipal Court shall have original jurisdiction over all violations of this Code and over any action brought in the Municipal Court, whether a civil or criminal violation. It shall also have the power to impose criminal fines, imprisonment, civil penalties, restitution, program participation and community service. The Municipal Judge shall have all the express and implied judicial powers relating to the operation of the Court, including but not limited to the power to compel attendance at sessions of courts, to punish for contempt of court by fine, imprisonment or both, and to enter default and default judgment for a party's failure to appear for a civil infraction. However, these judicial powers shall be subject to the United States Constitution, the applicable court rules of procedures, state statutes when applicable and this Code. (Ord. 94-1 §1)

Sec. 2-123. Jury trial.

(a) Any person who is charged with a criminal violation shall be entitled to a jury trial in accordance with the United States Constitution, the State Constitution, state statutes and the Colorado Municipal Court Rules. However, any person charged with a civil infraction will have committed a civil violation, and thus, shall not be entitled to a jury trial.

(b) No person under the age of eighteen (18) years shall be entitled to a jury trial when the petition alleges a delinquent act which is a misdemeanor, a petty offense, a violation of a municipal ordinance or a violation of a court order. (Ord. 94-1 §1; Ord. 96-28 §1)

Sec. 2-124. Procedures.

The procedures of the Municipal Court shall be in accordance with the Colorado Municipal Court Rules of Procedure as promulgated by the Colorado Supreme Court. (Ord. 82-3 §3; Ord. 94-1 §1)

Sec. 2-125. Court of record.

The Municipal Court shall be a qualified municipal court of record, and the presiding Municipal Judge shall provide for the keeping of a verbatim record of the proceedings and evidence at trials by either electric devices or stenographic means. (Ord. 82-3 §4)

Sec. 2-126. Municipal Judge; appointment; salary; oath.

(a) The Municipal Court shall be presided over by a presiding Municipal Judge appointed by City Council for a term of two (2) years.

(b) The City Council may appoint additional judges from time to time as may be needed to transact the business of the court or to preside in the absence of the presiding judge.

(c) The presiding judge shall supervise and direct the court's operation.

(d) Before entering upon the duties of his or her office, the Municipal Judge shall take, subscribe and file with the City Clerk an oath or affirmation that he or she will support the Constitution of the United States, the Constitution
and laws of the State and the Charter and ordinances of the City, and will faithfully perform the duties of his or her office. (Ord. 82-3 §5; Ord. 94-1 §1)

Sec. 2-127. Sessions of court.

(a) There shall be regular sessions of court for the arraignment of defendants, the trial of cases and such other matters and proceedings as the business of the court may require. Such sessions shall be conducted no less frequently than once per month and shall be open to the public.

(b) The court shall be open during such hours as are set by the presiding Municipal Judge with the advice and consent of the City Council; provided, however, that the court shall be closed on weekends and local, state and national holidays except for extraordinary sessions. (Ord. 82-3 §6)

Sec. 2-128. Clerk of the Municipal Court.

(a) The presiding Municipal Judge shall appoint a person to serve as Court Clerk whose duties shall be those delegated by law, by court rule or by the presiding Municipal Judge. The compensation of the Court Clerk shall be in an amount fixed by resolution and shall be payable monthly.

(b) The Court Clerk shall file monthly reports with the City Clerk and with the presiding judge of all monies collected, either by fines or otherwise, and shall on the last day of each month pay to the Finance Director all such monies. (Ord. 82-3 §7; Ord. 94-1 §1)

Sec. 2-129. Appeals.

Appeals from the Municipal Court shall be in accordance with the practice and procedure provided by Section 13-10-116, et seq., C.R.S. (Ord. 82-3 §8)

Sec. 2-130. Failure of person to respond to process.

(a) In all cases where a person is summoned as a juror or as a witness to the Municipal Court and fails to attend at the time and place appointed, the court may issue a citation for the appearance of such juror or witness so failing to attend and direct such person to show cause why he or she should not be punished for contempt of court. Upon a satisfactory excuse being made, the court may discharge such person and release any bond posted pursuant thereto.

(b) In all cases where a person is summoned to appear at the Municipal Court or ordered to appear by the Municipal Judge, it is unlawful for such person to fail to appear at the time and place so ordered; and it may be punished as a contempt of court. (Ord. 82-3 §9; Ord. 94-1 §1)

Sec. 2-131. Work program.

Nothing contained herein shall deprive the Municipal Judge of the authority to permit defendants to perform labor and service for the City in lieu of paying all or a part of the fine or fines and costs imposed, under such terms and conditions as the Municipal Judge shall require. (Ord. 82-3 §11; Ord. 94-1 §1)

Sec. 2-132. Court costs.

(a) Whenever the Municipal Judge imposes any fine for any violation of an ordinance, in addition to any such fine or any other sentence, the Municipal Judge may also assess the following costs:

(1) Forty dollars ($40.00) upon the entry of a plea of guilty or no contest prior to trial to the Municipal Court;

(2) One hundred dollars ($100.00) upon a finding of guilty after a trial to the Municipal Court;
(3) Two hundred dollars ($200.00) plus all actual juror costs upon a finding of guilty after a trial to a jury or the entry of a plea of guilty or no contest prior to the commencement of a trial to a jury but after a jury has been summoned, unless the Municipal Court has been notified of the prospective plea at least forty-eight (48) hours prior to the date of the trial;

(4) Five hundred dollars ($500.00) for failure to appear in Municipal Court, failure to pay fines when due or failure to comply with any order of the Municipal Court;

(5) Fifty dollars ($50.00) for providing nonsufficient funds when payment is made by check;

(6) One hundred dollars ($100.00) upon the issuance of a bench warrant for failing to appear in Municipal Court, failing to pay fines and costs or failing to comply with any order of the Municipal Court;

(7) Five dollars ($5.00) for each subpoenaed City witness who appears at trial upon a finding of guilty by the Municipal Court, by the jury or upon the entry of a plea of guilty or no contest on the date of trial;

(8) Forty dollars ($40.00) for failure to comply with terms and conditions of a deferred judgment; and

(9) One hundred dollars ($100.00) upon the entry of any deferred judgment.

(10) The amount necessary to pay for the actual cost to the City of obtaining insurance coverage for those persons ordered to perform community service.

(11) Sixty-five dollars ($65.00) upon defendant's request to seal his or her criminal justice record for violations other than convictions.

(b) In addition to any fines and costs assessed by the Municipal Judge, there shall be added and separately reported a surcharge of thirty-seven percent (37%) of the fines and costs assessed rounded to the lowest dollar, provided that the total of the fine and surcharge shall not exceed the maximum fine provided for such violation by ordinance. The moneys raised by such surcharge shall be used to establish and fund programs for law enforcement assistance services for the City as approved by the Board of Aldermen.

(c) Payment of any fines, costs and surcharges shall be due within fourteen (14) days after the date they are assessed by the Municipal Judge. In calculating this time period, the day upon which the fines, costs and surcharges are assessed shall not be included. Thereafter, every day shall be counted, including holidays, Saturdays and Sundays. In the event the last day is a Saturday, Sunday or legal holiday, the time period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. The defendant against whom fines, costs and surcharges have been assessed may, upon approval of the Municipal Judge, extend payment beyond the fourteen-day period. In the event the Municipal Judge allows a defendant an extension of time for payment, the Municipal Judge shall assess an additional cost of thirty dollars ($30.00).

(d) For all appeals from decisions in the Municipal Court to the District Court, the Court Clerk shall require a transcript deposit according to the following schedule:

(1) One hundred fifty dollars ($150.00) transcript deposit for a trial to the Municipal Court; and

(2) Two hundred dollars ($200.00) transcript deposit for a trial to the jury.

(e) The Court Clerk shall charge the transcript preparation fee and photocopy cost prescribed by the Supreme Court of Colorado.
The transcript deposit shall be applied against the preparation costs of the transcript. If the preparation cost of the transcript is less than the transcript deposit, then the balance will be refunded to the requesting party by the Court Clerk. If the preparation cost of the transcript is more than the transcript deposit, the Court Clerk shall require the requesting party to pay the additional cost to prepare the transcript. The Municipal Judge may waive the transcript deposit and transcript preparation cost in all instances of proven indigence. (Ord. 2012-10 §1; Ord. 2013-51 §1; Ord. 2014-21 §1; Ord. 2017-22 §1)

Sec. 2-133. Trials.

(a) Trial by jury. A defendant shall be entitled to a jury trial if:

(1) The defendant is charged with an offense for which Section 2-123 of this Code preserves the right to a jury trial; and

(2) Within twenty (20) days after arraignment or entry of plea, the defendant files with the Municipal Court a written jury demand and at the same time tenders a jury fee of twenty-five dollars ($25.00), unless the jury fee is waived by the Municipal Judge because of the indigence of the defendant.

(b) Jury membership. The jury shall consist of three (3) jurors unless a greater number, not to exceed six (6), is requested by the defendant in a written jury demand. Jurors shall be selected from a jury list as provided for courts of record, and shall be paid the sum of:

(1) Six dollars ($6.00) per day for actual jury service.

(2) Three dollars ($3.00) for each day of service on the jury panel alone.

(c) Trial to the court. All other charges to which the defendant has pled not guilty, but for which the defendant has not perfected the right to a jury trial pursuant to Subsection (a) above shall be tried to the court with the Municipal Judge as fact-finder. (Ord. 94-1 §1; Ord. 2006-4 §1)

Sec. 2-134. Violations Bureau.

(a) Creation. There is hereby created a Violations Bureau within the Municipal Court. The Court is authorized to establish by order the procedures by which a person may answer a charge of the violations set forth in this Section by paying a fine, pleading guilty in writing and waiving a hearing through a mail-in process.

(b) Penalty assessment notices.

(1) The Municipal Court is specifically authorized through the Violations Bureau to process penalty assessment notices, and the Police Department is specifically authorized to issue penalty assessment notices in accordance with this Section. This Section shall not be interpreted to require the Police Department to issue a penalty assessment for the violations set forth herein, where a summons and complaint requiring a court appearance might otherwise be issued as provided by this Code.

(2) The penalty assessment notice issued by the Police Department shall be a summons and complaint containing identification of the alleged offender, specification of the offense and the applicable fine as set forth in Subsection (c) of this Section 2-134 of this Code, a requirement that the offender pay the fine or appear to answer, the charge as set forth in the summons and complaint and a waiver of the right to a hearing on the offense specified on the summons and complaint.

(3) If the person issued a penalty assessment notice hereunder chooses to acknowledge his or her guilt, he or she may pay the specified fine to the Violations Bureau within the time specified in the notice. If he or she
chooses not to acknowledge his or her guilt, he or she shall appear as required in the notice. Upon trial, if the alleged offender is found guilty, the fine imposed shall be that set forth in the notice of the offense for which he or she was found guilty, but customary court costs and surcharges may be assessed in addition to the fine.

(4) Nothing herein shall be interpreted to restrict the enforcement authority of peace officers, and said peace officers shall retain all enforcement authority authorized by law, including but not limited to detaining and arresting violators.

(c) **Designation of violations and penalties.**

(1) A penalty assessment may be issued for a first violation within the City of Black Hawk of the following sections of this Code not involving bodily injury or restitution, pursuant to the following schedule:

$50.00 fine plus court costs and surcharges.
- Sec. 7-60. Attachment to dog collar or harness.
- Sec. 8-7. Unnecessary idling of delivery and commercial vehicles.
- Sec. 10-133. Panhandling.

$75.00 fine plus court costs and surcharges.
- Sec. 7-22. Littering public or private property.
- Sec. 7-52. License required.
- Sec. 7-54. Rabies inoculation required.
- Sec. 7-69. Running at large prohibited.
- Sec. 7-74. Noisy dogs prohibited.
- Sec. 8-46. Shuttle driver regulations.
- Sec. 8-111. Restricted streets.
- Sec. 10-24. Limitations on deliveries within the Gaming District.
- Sec. 10-25. Construction-related deliveries.
- Sec. 10-28. Prohibited use of skateboards, bicycles, in-line skates, roller skates, motor scooters, motor bicycles or other similar devices on public sidewalks.

$100.00 fine plus court costs and surcharges.
- Sec. 7-153. General smoking restrictions.
- Sec. 10-144(b). Possession of marijuana (public use).
- Sec. 10-144(d). Possession of marijuana (drug paraphernalia).
- Sec. 10-145. Open container and re-corking exception.
- Sec. 10-168. Missiles.

$150.00 fine plus court costs and surcharges.
- Sec. 10-128. Urination and defecation in public.
- Sec. 10-142. Alcohol-related violations. However, if the defendant is under eighteen (18) years of age, a penalty assessment shall not be issued and a mandatory court appearance shall be required.
- Sec. 10-144.5. Possession of marijuana (under twenty-one (21) years of age). However, if the defendant is under eighteen (18) years of age, a penalty assessment shall not be issued and a mandatory court appearance shall be required.

(2) The specific violations and penalties set forth in this Subsection shall apply to first offenses only, and regardless of the general penalty set forth in Article IV of Chapter I or other provisions of this Code, said first offenses shall be considered civil offenses. They shall be of an administrative nature and a judgment of conviction shall not carry the same stigmatizing or condemnationary significance as criminal penalties. First offenses for the specific violations set forth in this Subsection shall not be subject to criminal sanctions, including but not limited to imprisonment. If a violation set forth in this Subsection is considered criminal elsewhere in the Code, the Municipal Court
shall not report a conviction for a first offense pursuant to this Article to the Colorado Bureau of Investigation or other law enforcement agency as it otherwise would for criminal convictions.
(d) **Right to hearing.** Nothing in this Section 2-134 shall be deemed to disqualify a person from having the right to a hearing and a trial to the extent otherwise permitted by law.

(e) **Plea bargains by mail.** Nothing in the enactment of this Section shall prevent the Municipal Court from offering plea bargains by mail for offenses which are both within or without the authority of the Violations Bureau to process, for which a summons and complaint is issued. Any such plea bargains offered by mail shall be specifically authorized by the Municipal Prosecutor, and shall include a recitation of the alleged violator's constitutional rights and a plea of guilty and waiver of appearance form providing the person receiving the offer with a choice of pleading guilty and waiving a court appearance, or appearing in the Municipal Court on the date specified in the plea bargain offer. Said plea bargain shall include the imposition of any administrative costs and surcharges otherwise required by ordinance. (Ord. 2013-31 § 1; Ord. 2014-24 § 1)

Editor's note: Section 2 of Ord. 2014-24, adopted Nov. 12, 2014, provides that, to the extent that the fine schedule set forth in Section 2-134 conflicts with any schedule of fines adopted by the Black Hawk Municipal Court, the fine schedule set forth herein shall control.

**Secs. 2-135—2-150. Reserved.**

**ARTICLE VII**

**Police Department**

**Sec. 2-151. Creation; composition.**

There is hereby created a Police Department for the City which shall consist of one (1) Chief of Police and as many police officers as may from time to time be deemed necessary for the safety and good order of the City. (Ord. 94-1 §1)

**Sec. 2-152. Departmental rules and regulations.**

The Police Department shall be operated and managed in accordance with such departmental rules and regulations as may from time to time be adopted by the Board of Aldermen. (Ord. 94-1 §1)

**Sec. 2-153. Chief of Police; appointment; powers and duties.**

(a) The City shall employ a Chief of Police who shall be the head of the Police Department. It shall be the duty of the Chief of Police to:

(1) See that the ordinances of the City and the laws of the State are duly enforced and the rules and regulations of the Police Department obeyed, and perform such duties as may be required by the Board of Aldermen.

(2) Direct the operations of the Police Department, subject to the rules and regulations thereof.

(3) Arrest any person violating any of the City ordinances and take such violator before the Municipal Court for trial.

(4) Render such accounts of the Police Department, his or her duties and receipts as may be required by the Board of Aldermen, and keep the records of his or her office open to inspection by the Board of Aldermen at any time.

(b) Before entering upon the duties of such office, the Chief of Police shall take and subscribe to an oath that he or she will support the Constitution and laws of the State, the Constitution of the United States and ordinances of the City, and that he or she will faithfully perform the duties of the office upon which he or she is about to enter. (Ord. 94-1 §1)

**Sec. 2-154. Duties of police officers.**

All members of the Police Department shall have power and duties as follows:

(1) They shall perform all duties required by the Chief of Police.
(2) They shall suppress all riots, disturbances and breaches of the peace and apprehend all disorderly persons in the City, and shall pursue and arrest any person fleeing from justice in any part of the State.

(3) They shall be the enforcement officers of the City and shall see that the provisions of the ordinances of the City and the laws of the State are complied with. They shall arrest without process all persons engaged in the violation in their presence of any provision of the ordinances of the City or the laws of the State.

(4) They shall execute and return all writs and processes to them directed by the Municipal Judge in any case arising under a City ordinance. (Ord. 94-1 §1)

Sec. 2-155. Oath of officers.

Before entering upon the duties of his or her office, each police officer shall take and subscribe an oath that he or she will support the Constitution and laws of the State, the Constitution of the United States and the ordinances of the City, and that he or she will faithfully perform the duties of the office upon which he or she is about to enter. (Ord. 94-1 §1)

Sec. 2-156. Duty of citizens to aid police officers.

It shall be the duty of all persons, when called upon by any police officer, to promptly aid and assist such officer in the discharge of his or her duties. (Ord. 94-1 §1)

Secs. 2-157—2-170. Reserved.

ARTICLE VIII

Fire Department

Sec. 2-171. Creation; composition.

The Fire Department shall be charged with the duty to operate fire equipment, and to make fire inspections as is required by the City. (Ord. 78-6 §1; Ord. 94-1 §1)

Sec. 2-172. Fire Chief.

The City shall employ a Fire Chief who shall have the general charge and supervision of all members of the Fire Department and the fire equipment of the City. (Ord. 78-6 §2; Ord. 94-1 §1)

Sec. 2-173. Duties of Fire Chief.

It shall be the duty of the Fire Chief to keep or cause to be kept such records as may from time to time be required. He or she shall, semi-annually, and at such other times as the Board of Aldermen may request, report on the quantity of fire fighting equipment and its condition, and list all fires occurring since his or her last report, the number of false alarms, the estimated amount of property destroyed, and such other statistics in relation to losses, insurance and the cost of fires as he or she is able to procure. In such report he or she shall also make recommendations for changes or expenses to be incurred for the greater efficiency of the Fire Department. (Ord. 78-6 §3; Ord. 94-1 §1)

Sec. 2-174. Alarm signals.

The Fire Chief, with the approval of the Board of Aldermen, shall adopt rules and regulations for giving signals and sounding alarms for fires, and the Fire Chief shall have the power to alter and change the same from time to time, subject to approval by the Board of Aldermen. (Ord. 78-6 §4; Ord. 94-1 §1)

Sec. 2-175. Authority during fire.

When a fire is in progress, the Fire Chief or in his or her absence the assistant chief, may order any building, buildings, fences or other structures that are in close proximity to such fire to be torn down, blown up or otherwise disposed of, if he or she deems it necessary for
the purpose of checking the progress of any fire. (Ord. 78-6 §5)

Sec. 2-176. Response to out-of-City alarms.

No fire fighting equipment or emergency first aid equipment shall be taken from the City, except to a fire or other emergency, without permission of the Board of Aldermen. Whenever a fire or other emergency occurs out of the City, only such equipment as has been designated by the Fire Chief shall proceed to such fire or other emergency. (Ord. 78-6 §6)

Sec. 2-177. Fire Wardens appointed.

The Fire Chief and Assistant Engineer of the Fire Department, the Chief of Police and the Building Inspector are hereby declared ex officio Fire Wardens, and are hereby authorized and empowered to do and perform any and all duties of Fire Wardens as might be set forth in this Article or any other ordinance regulating fires, fire hazards and/or the fire code. (Ord. 78-6 §7)

Sec. 2-178. Reserved.

Editor's note: Ord. No. 2019-4, § 1, adopted January 23, 2019, repealed § 2-178, which pertained to bylaws and derived from Ord. 78-6 §8.

Sec. 2-179. Fire scene authority.

The Fire Department officer in charge at the scene of any fire shall have the authority to demand assistance from bystanders, to order any persons away from the scene of the fire, and to rope off any areas in which persons are not permitted to enter. Failure to obey any such order shall constitute a violation of this Code and shall subject said person or persons to the penalty provisions of the same. (Ord. 78-6 §9)

Secs. 2-180—2-190. Reserved.

ARTICLE IX

Lace House

Sec. 2-191. Administration.

The administration of the Lace House shall be conducted by the Board of Aldermen through the Lace House Commissioner. (Ord. 84-1 §2)

Sec. 2-192. Architectural control.

All architectural changes recommended by any public, private or nonprofit group or individual shall be reviewed and approved by the Board of Aldermen prior to implementation. (Ord. 84-1 §3)

Sec. 2-193. Sale of Lace House structure.

The City covenants that the Lace House structure shall not be sold to any private party or corporation, nor shall any lien, mortgage or deed of trust be permitted or placed upon the Lace House structure which might result in the property coming into private hands. In the event the City needs or desires to divest itself of the Lace House structure, it may be transferred only to a governmental entity, a private nonprofit organization or a recognized public foundation. (Ord. 84-1 §4; Ord. 97-23 §1)

Sec. 2-194. Term.

These covenants shall run with the Lace House structure and be binding on all persons and parties claiming under them while this Article is in effect. (Ord. 84-1 §5; Ord. 97-23 §2)

Sec. 2-195. Enforcement.

Enforcement shall be by proceedings at law or in equity against any person violating or attempting to violate any covenant to restrain the violation or to recover damages. Any citizen or resident of the City shall be deemed to be
Secs. 2-196—2-210. Reserved.

ARTICLE X

Residency Requirements

Sec. 2-211. Proximity requirement for key employees.

(a) All "key employees" employed by the City shall be required to reside within twenty-five (25) travel miles of the City boundaries in order that they be in close proximity to the City in case of an emergency or other unforeseen circumstance that requires a rapid response time by the City.

(b) For the purposes of this Section 2-211, the following employees are determined to be key employees employed by the City: the City Manager. (Ord. 2008-32 §1)

Secs. 2-212—2-230. Reserved.

ARTICLE XI

Transportation Department

Sec. 2-231. Creation.

There shall be and is hereby created within the Department of Public Works a Transportation Department, which Transportation Department shall hereafter be referred to in this Article as the "Department." (Ord. 2010-31 §1)

Sec. 2-232. Functions; rules, regulations and policies.

The duties and functions of the Department shall be to operate, manage, direct and supervise the City's municipal bus system, including but not limited to managing the bus system's operations, finances, personnel, routes, stops,
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ARTICLE I
Fiscal Year

Sec. 4-1. Fiscal year established.

The fiscal year of the City shall commence on January 1 of each year and shall extend through December 31 of the same year. (Ord. 71-2 §2; Ord. 94-1 §1)

Secs. 4-2—4-10. Reserved.

ARTICLE II
Funds Generally

Sec. 4-11. Custody and management of funds.

Moneys in the funds created in this Article shall be in the custody of and managed by the Finance Director. The Finance Director shall maintain accounting records and account for all of said moneys as provided by law. Moneys in the funds of the City shall be invested or deposited by the Finance Director in accordance with the provisions of law. All income from the assets of any fund shall become a part of the fund from which derived and shall be used for the purpose for which such fund was created; provided that, except as otherwise provided in this Article or by other ordinances or laws or by this Code, the City Council may transfer out of any fund any amount at any time to be used for such purpose as the City Council may direct. (Ord. 94-1 §1)

Sec. 4-12. Collections.

(a) Purpose. Whereas, state law empowers the City to certify delinquent charges, assessments or taxes to the County for collection and sets forth procedures therefor; and whereas, Section 31-20-105, C.R.S., obligates the City to evidence to the County the authority so to do by virtue of an ordinance, this Section constitutes the additional required act by said statute to empower the County to collect said charges, assessments or taxes.

(b) The City adopts by reference Sections 31-20-105, 106 and 107, C.R.S., and hereby ordains and establishes its authority to certify to the County Clerk by resolution adopted by the City Council, delinquent charges, assessments or taxes of any nature whatsoever, including assessments for the City's costs of enforcing its building code. (Ord. 77-3; Ord. 2015-6, §1)

Secs. 4-13—4-30. Reserved.

ARTICLE III
General and Special Funds

Sec. 4-31. General Fund created.

There is hereby created a fund, to be known as the General Fund, which shall consist of the following:

(1) All cash balances of the City not specifically belonging to any existing special fund of the City.

(2) All fixed assets of the City (to be separately designated in an account known as the General Fund Fixed Assets) not specifically belonging to any existing special fund of the City. (Ord. 94-1 §1)

Sec. 4-32. Capital Improvement Fund created.

There is hereby created a special fund, to be known as the Capital Improvement Fund. (Ord. 94-1 §1)

Sec. 4-33. Conservation Trust Fund created.

There is hereby created a special fund, to be known as the Conservation Trust Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 94-1 §1)
Sec. 4-34. Lace House Fund.

All funds received from private or public sources, except from the treasury of the City, shall be deposited in a federally insured banking institution account called The Lace House Fund. This account and any income therefrom shall be used exclusively for the charitable uses and purposes described herein. The funds may be utilized for restoration, rehabilitation, preservation and maintenance of the Lace House and appurtenances to the Lace House property. These funds shall be disbursed solely by the decision of the City Council. Under no conditions will any contributions inure to the benefit of any private person or corporation. No part of the account shall be used to carry on propaganda or otherwise attempt to propose legislation or to participate in any political campaign. (Ord. 84-1 §1)

Secs. 4-35—4-40. Reserved.

ARTICLE IV

Sales Tax*

Sec. 4-41. Purpose.

(a) The purpose of this Article is to impose a four and one-half percent (4½%) sales tax on the sale of tangible personal property at retail and the furnishing of services and credit sales and exchanges of property at retail as provided in Section 29-2-105(1)(d), C.R.S., upon every retailer in the City, with the revenue generated by one-half percent (½%) of such tax being dedicated to marketing and promoting the City through fireworks displays, holiday light displays, public flower boxes, and other general governmental purposes. In addition, this Article shall provide the power necessary to exercise effectively the right to raise revenue that is essential to home rule and self-government. Similarities to state law adopted in this Article are for the purpose of promoting efficiency in the collection of revenue, and, except where prohibited by state law, such matters are declared to be matters of local concern.

(b) The provisions of this Article shall apply to the imposition as well as administration, enforcement and collection of sales tax by the City and shall apply to the administration of the City license as described in this Article.

(c) The provisions of this Article shall be construed to effect uniformity of administration, enforcement and collection of taxes and to establish uniform procedures, but shall not be construed to extend or increase the application, rate or amount of any tax levied or imposed by this Article; provided, however, that the imposition of a penalty, interest or both interest and penalty shall be lawful and shall not be construed as an extension or increase of the application, rate or amount of tax. The substantive provisions of this Article, including but not limited to Section 4-50 of this Article, shall be construed in a manner consistent with state law, in effect on January 1, 2010. Procedural differences between this Article and state statute, if any, are solely intended to facilitate the City's self-collection of sales tax, as is permitted by Article XX, Section 6, of the Colorado Constitution and Article VI, Section 1(a) and (b) of the City's Home Rule Charter.

(d) Effective January 1, 2009, this Article shall also impose an additional one-and-one-half-percent sales tax on the same transactions identified in Subsection (a) above for the purpose of providing financial support to the Gilpin County School District RE-1, except that this additional tax shall expire upon the occurrence of one (1) of the conditions set forth in Section 4-80 of this Article.

(e) The City finds and determines that to further effect uniformity of administration, enforcement and collection of taxes and to estab-
lish uniform procedures, that the City determines to follow the rules promulgated by the State of Colorado, as the same may be amended from time to time, regarding both out-of-City and out-of-state vendors doing business in the State of Colorado.

(Ord. 2018-1 §1; Ord. 2019-1 §1; Ord. 2019-9 §1)

Sec. 4-42. Definitions.

Except as defined below, the words used in this Article shall be defined in Section 39-26-102, C.R.S., and said definitions are incorporated herein by this reference.
Aircraft means a device that is used or intended to be used for flight in the air.

Aircraft part means any tangible personal property that is intended to be permanently affixed or attached as a component part of an aircraft.

Business means all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.

Charitable organization means any entity which: (1) has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, and (2) is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons or animals, freely and voluntarily ministers to the physical, mental, or spiritual needs of persons or animals, and thereby lessens the burden of government.

City means the municipality of the City of Black Hawk.

Coins means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium or other such metals now, in the future or heretofore designated as a medium of exchange under the laws of this State, the United States or any foreign nation.

Collection costs shall include, but is not limited to, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraint, litigation, locksmith fees, auction fees and costs, prosecution and attorney fees.

Commercial shipping materials means materials that do not become part of the finished product to the purchaser which are used exclusively in the shipping process. Commercial shipping materials include but are not limited to containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.

Construction equipment means any equipment, including mobile machinery and mobile equipment, which is used to erect, install, alter, repair, remodel, or otherwise make improvements to any real property, building, structure or infrastructure.

Construction materials means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a structure or project including public and private improvements. Construction materials include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral or inseparable part of completed structure or project are not construction materials.

Consumer means any person in the City who purchases, uses, stores, distributes or otherwise consumes in the City tangible personal property or taxable services purchased from sources inside or outside the City.

Contract auditor means a duly authorized agent designated by the taxing authority and qualified to conduct tax audits on behalf of and pursuant to an agreement with the municipality.

Contractor means any person who shall build, construct, reconstruct, alter, expand, modify,
or improve any building, dwelling, structure, infrastructure, or other improvement to real property for another party pursuant to an agreement. For purposes of this definition, "contractor" also includes subcontractor.

Cover charge means a charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages.

Engaged in business in the City means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the City. Engaged in business in the City includes, but is not limited to, any one of the following activities by a person: (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction; (2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons; (3) Maintains one (1) or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction; (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or (5) Makes more than one (1) delivery into the taxing jurisdiction within a twelve-month period.

Farm closeout sale means full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.

Finance Director means the Finance Director of the City of Black Hawk or such other person designated by the municipality; Finance Director shall also include such person's designee.

Food for home consumption means food for domestic home consumption as defined in 7 U.S.C. Sec. 2012 (k), as amended, for purposes of the federal food stamp program, or any successor program, as defined in 7 U.S.C. Sec. 2012 (1), as amended; except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; packaged and unpackaged cold sandwiches; deli trays; and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a retailer.

Gross sales means the total amount received in money, credit, property or other consideration valued in money for all sales, leases, or rentals of tangible personal property or services.

Internet access services means services that provide or enable computer access by multiple users to the Internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of internet access services.

License means a City of Black Hawk sales and/or use tax license.

Machinery means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.

Manufacturing means the operation or performance as a business of an integrated series of operations which places a product, article, substance, commodity, or other tangible personal property in a form, composition or character different from that in which it was acquired whether for sale or for use by a manufacturer. The change in form, composi-
tion or character must result in a different product having a distinctive name, character or use from the raw or prepared materials.

Mobile machinery and self-propelled construction equipment means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the public highways. This definition includes but is not limited to wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells, and the digging of ditches.

Person means any individual, firm, partnership, joint venture, corporation, limited liability corporation, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.

Precious metal bullion means any precious metal, including but not limited to, gold, silver, platinum, palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.

Preprinted newspaper supplements shall mean inserts, attachments or supplements circulated in newspapers that: (1) are primarily devoted to advertising; and (2) the distribution, insertion, or attachment of which is commonly paid for by the advertiser.

Price or purchase price means the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if: (1) Such exchanged property is to be sold thereafter in the usual course of the retailer's business, or (2) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

Price or purchase price includes: (1) The amount of money received or due in cash and credits. (2) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business. (3) Any consideration valued in money, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange. (4) The total price charged on credit sales including finance charges which are not separately stated. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. (5) Installation, applying, remodeling or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated. (6) Transportation and other
charges to effect delivery of tangible personal property to the purchaser. (7) Indirect federal manufacturers’ excise taxes, such as taxes on automobiles, tires and floor stock. (8) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

*Price or purchase price* shall not include: (1) Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof. (2) The fair market value of property exchanged if such property is to be sold thereafter in the retailers’ usual course of business. This is not limited to exchanges in Colorado. Out of state trade-ins are an allowable adjustment to the purchase price. (3) Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser, and the seller is not reimbursed for the discount by the manufacturer or someone else. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

*Purchase or sale* means the acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, sold, used, stored, distributed, or consumed. These terms include capital leases, installment and credit sales, and property and services acquired by: (1) Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, other taxable products, or taxable services; (2) A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property, other taxable products, or taxable services; (3) Performance of taxable services; or (4) Barter or exchange for other tangible personal property, other taxable products, or services. The terms *purchase and sale* do not include: (1) A division of partnership assets among the partners according to their interests in the partnership; (2) The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets; (3) The dissolution and the pro rata distribution of the corporation’s assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets; (6) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder.

*Retailer* means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. Retailer shall include, but is not limited to, any: (1) Auctioneer; (2) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer; (3) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes; (4) Retailer-contractor, when acting in the capacity of a retailer.

*Retailer-contractor* means a contractor who is also a retailer of building supplies, construction materials, or other tangible personal property, and purchases, manufactures, or fabricates such property for resale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.

*Return* means any form prescribed by the city/town administration for computing and reporting a total tax liability.
Sales tax means the tax that is or should be collected and remitted by a retailer on sales taxed under this Code.

School means an educational organization which maintains a faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are routinely conducted.

Storage means any keeping or retention of, or exercise or dominion or control over, or possession of, for any length of time, tangible personal property not while in transit but on a stand still basis for future use when leased, rented or purchased at retail from sources either within or without the City from any person or retailer.

Tax means the use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.

Tax deficiency or deficiency means any amount of tax, penalty, interest, or other fee that is not reported and/or not paid on or before the date that any return or payment of the tax is required under the terms of this Code.

Taxable sales means gross sales less any exemptions and deductions specified in this Code.

Taxable services means services subject to tax pursuant to this Code.

Taxpayer means any person obligated to collect and/or pay tax under the terms of this Code.

Telecommunications service means the service of which the object is the transmission of any two-way interactive electronic or electromagnetic communications including but not limited to voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave, Voice over Internet Protocol (VoIP), or any combinations of such media, including any form of mobile two-way communication.

Therapeutic device means devices, appliances, or related accessories that correct or treat a human physical disability or surgically created abnormality.

Total tax liability means the total of all tax, penalties and/or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

Use means the exercise, for any length of time by any person within the City of any right, power or dominion over tangible personal property or services when rented, leased or purchased at retail from sources either within or without the City from any person or retailer used in the performance of a contract in the City whether such tangible personal property is owned or not owned by the taxpayer. Use also includes the withdrawal of items from inventory for consumption.

Use tax means the tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the City.

Wholesaler means any person doing an organized wholesale or jobbing business and selling to licensed retailers, jobbers, dealers, or other wholesalers, for the purpose of resale, and not for storage, use, consumption, or distribution.

(Ord. 2018-1 §1)

Sec. 4-43. Sales tax exempt property and services.

The following goods and services shall be exempt from the sales tax imposed by this Article, it being the intent of this Section that, where applicable, these exemptions are inter-
preted and applied according to the state law sales tax exemptions described in Part 7, Article 26, of Title 39, C.R.S.:

(a) All sales which the City is prohibited from taxing under the constitution or laws of the United States, the State or the City's Charter.

(b) Sales to the United States government and to the State, its departments and institutions and the political subdivisions thereof in their governmental capacities.

(c) All sales of cigarettes.

(d) Sales of prescription drugs, prosthetic and therapeutic devices for humans under the following conditions:

(1) Therapeutic devices, appliances or related accessories with a retail value of more than one hundred dollars ($100.00), which are sold to correct or treat a human physical disability or surgically created abnormality and when sold in accordance with a written recommendation from a licensed doctor;

(2) Therapeutic devices, appliances or related accessories with a retail value of one hundred dollars ($100.00) or less, when sold to correct or treat a human physical disability or surgically created abnormality.

(e) All sales and purchases of rooms or accommodation or lodging services to any occupant who is a permanent resident of any hotel, inn, bed and breakfast residence, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer court, mobile home, auto camp or trailer court or park, and who enters into or has entered into a written agreement for occupancy of a room or accommodations for a period of at least thirty (30) consecutive days during the calendar year or preceding year.

(f) All sales made to schools, other than schools held or conducted for private or corporate profit.

(g) Any sale of a new or used trailer, semi-trailer, truck, truck-tractor or truck body if such vehicle is purchased for use exclusively outside the City or in interstate commerce and is delivered by the manufacturer or licensed dealer to the purchaser within the City, if the purchaser drives or moves such vehicle to any point outside the City within thirty (30) days after the date of delivery and if the purchaser furnishes an affidavit to the seller that such vehicle shall be permanently licensed and registered outside the City and shall be removed from the City within thirty (30) days of delivery.

(h) All sales of construction materials to a common carrier by rail operating in interstate or foreign commerce for use by such common carrier in construction and maintenance of its railroad tracks.

(i) All transactions in which the fair market value of the exchanged property is excluded from the consideration or purchase price, because there is no additional consideration involved in the transaction.

(j) Any right to the continuous possession or use for three (3) years or less of any article of tangible personal property under a lease or contract, if the lessor has paid a sales or use tax on such tangible personal property upon its acquisition. The City may permit a lessor of tangible personal property leased for a period of three (3) years or less to acquire such property free of sales or use tax if the lessor agrees to collect sales tax on all lease payments received on such property.

(k) All sales of aircraft used or purchased for use in interstate commerce by a commercial airline, aircrafts purchased by out-of-State residents for use out of State and the sale of aircraft parts.
(l) The sale of tangible personal property that is to be affixed or attached as a component part of a locomotive, a freight car, railroad work equipment or other railroad rolling stock.

(m) All sales of locomotives, freight cars, railroad work equipment and other railroad rolling stock used or purchased for use in interstate commerce by a railroad company.

(n) Internet access services and, in accordance with the Mobile Telecommunications Sourcing Act, 4 U.S.C. §§ 116 to 126, as amended, mobile telecommunications service provided to a customer whose place of primary use is outside the boundaries of the City.

(o) Forty-eight percent (48%) of the purchase price of factory built housing as such housing is defined in 24-32-3302(11), C.R.S. as amended, and the entire purchase price in any subsequent sale of a motor home, as such vehicle is defined in Section 42-1-102(57), C.R.S. as amended, after such motor home has been subject to the payment of sales tax.

(p) All sales of precious metal bullion and coins.

(q) All sales and purchases of refractory materials and carbon electrodes used by a person manufacturing iron and steel for sale and all sales and purchases of inorganic chemicals used in the processing of vanadium-uranium ores.

(r) All sales of equipment, as defined in Section 12-9-102(5), C.R.S., to a bingo-raffle licensee, as defined in Section 12-9-102(1.2), C.R.S.

(s) All sales and purchases of machinery that comprises a clean room, when used to produce tangible property, such as computer components, microprocessors, software media, biotechnological products, nanotechnological products, photonic products and pharmaceuticals.

(t) Agricultural compounds, animal pharmaceuticals and agricultural pesticides according to Section 39-26-716, C.R.S., and according to the temporary moratorium imposed on these exemptions until June 30, 2013.

(u) All sales of construction materials, if such materials are picked up by the purchaser, and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the City evidencing that a local use tax has been paid or is required to be paid to another jurisdiction.

(v) All sales of construction materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned or used by:

1. The United States government, the State, its departments and institutions and the political subdivisions thereof in their governmental capacities only;

2. Charitable organizations in the conduct of their regular charitable functions and activities; or

3. Schools, other than schools held or conducted for private or corporate profit.

(w) All sales and purchases of newsprint and printer’s ink for use by publishers of newspapers and commercial printers and all sales and purchases of newspapers.

(x) All sales and purchases of food, as specified in 7 U.S.C. § 2012(g), as such section existed on October 1, 1987, or is thereafter amended, which is purchased with food
stamps pursuant to the federal food stamp program, or sales and purchases of food, as specified in 42 U.S.C. § 1786, as such section existed on October 1, 1987, or is thereafter amended, which is purchased with Women Infant Children ("WIC") vouchers or checks pursuant to the federal special supplemental program for women, infants and children.

(y) All occasional sales by charitable organizations of tangible personal property.

(z) All sales made to charitable organizations in the conduct of their regular charitable functions and activities.

(aa) Sales and purchases of electricity, coal, wood, gas, fuel, oil or coke sold, but not for resale, to occupants of residences, whether owned, leased or rented by said occupants, for the purpose of operating residential fixtures and appliances that provide light, heat and power for such residences. Gas shall include natural, manufactured and liquefied petroleum gas.

Sec. 4-44. Exemptions; state taxes.

The amount subject to tax under this Article shall not include the state sales and use tax imposed by Article 26, Title 39, C.R.S.

Sec. 4-45. Consummation of a taxable transaction.

For the purpose of this Article, all retail sales shall be considered consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his or her agent to a destination outside the City, or to a common carrier for delivery to a destination outside the limits of the City.

Sec. 4-46. Delivery charge to retailer.

The gross sales include delivery charges when such charges are subject to the state sales and use tax imposed by Article 26 of Title 39, C.R.S., regardless of the place to which delivery is made.

Sec. 4-47. Credit sales taxed.

In case of a sale upon credit, or a contract for sale wherein it is provided that the price shall be paid in installments and title does not pass until a future date or a chattel mortgage or a conditional sale, there shall be paid upon each payment, upon the account of purchase price, that portion of the total tax which the amount paid bears to the total purchase price.

Sec. 4-48. Place of business.

In the event a retailer has no permanent place of business in the City or more than one (1) place of business, the place or places at which the retail sales are consummated for the purpose of this sales tax shall be determined by the provisions of Article 26 of Title 39, C.R.S., and by the rules and regulations promulgated by the Department of Revenue. A retailer shall be deemed to be engaged in business in the City as defined in this Article.

Sec. 4-49. Exempt sales.

All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the City sales tax when such sales meet both of the following conditions:

(a) The purchaser is a nonresident of or has its principal place of business outside the City; and
(b) Such personal property is registered or required to be registered outside the limits of the City under the laws of the State.

(Ord. 2018-1 §1)

Sec. 4-50. Imposition of tax; schedules.

(a) There is hereby imposed on all sales or exchanges of tangible personal property at retail and the furnishing of services as provided in Section 39-26-104, C.R.S., and credit sales, a tax equal to four and one-half percent (4½%) of the gross sales and an additional tax equal to one and one-half percent (1½%) of the gross sales, separately subject to the termination provisions set forth in Section 4-80 below.

(b) The tangible personal property, services and credit sales taxable by this Article shall be the same as the tangible personal property, services and credit sales taxable pursuant to Sections 39-26-104 and 39-26-111, C.R.S.

(c) The imposition of the tax on individual sales shall be in accordance with schedules set forth in the rules and regulations promulgated by the City Manager by separate ordinance of the City. If any retailer, during any reporting period, shall collect as a tax an amount in excess of the amount required of his or her total taxable sales, he or she shall remit to the City Manager the full amount of the tax herein imposed and also such excess.

(Ord. 2018-1 §1)

Sec. 4-51. Collection, enforcement, etc.

(a) The administration of all provisions of this Article and of the City's sales tax is hereby vested in and shall be exercised by the City Manager, who shall prescribe forms and formulate and promulgate appropriate rules and regulations to effectuate the purpose of this Article, in conformity with this Article and subject to other provisions of law relating thereto, for the making of returns, for the ascertainment, assessment and collection of the taxes imposed and for the proper administration and enforcement thereof, and to provide uniform methods of adding the tax, or the average equivalent thereof, to the purchase price. Rules and regulations adopted, amended or rescinded by the City Manager shall be effective in the manner and at the time prescribed, subject to the provisions of the Article. The City Manager is authorized to delegate any duty or power conferred by this Article to a subordinate unless otherwise specifically prohibited from doing so herein.

(b) For the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the tax due from any taxpayer, the City Manager shall have power to examine or cause to be examined the records required to be kept by Section 4-52 below. Subject to the provisions of this Article, the City Manager is authorized to prescribe the duties and powers of such officers, accountants, experts and other persons, including but not limited to contract auditors, as may be necessary in the performance of his or her duty. The City Manager may delegate to any employee of the City such power and authority as deemed reasonable and proper for the effective administration of this Article.

(Ord. 2018-1 §1)

Sec. 4-52. Audits.

(a) Taxpayer's retention of records. It shall be the duty of every person, firm or corporation liable to the City for any tax to keep and preserve for a period of at least three (3) years from the date of filing the return with the City the records described in Subsection (b) below.

(Ord. 2018-1 §1)
City, irrespective of whether the seller or lessor regards the sale to be taxable or non-taxable.

(2) All deductions allowed by law and claimed in filing returns.

(3) Receipts for purchases of all tangible personal property purchased for sale, consumption or lease in the City, including detailed invoices for goods and services provided by subcontractors, if any. The taxpayer’s name and address shall be clearly indicated on all receipts.

(c) Travel required to perform audit. In the case of a person, firm or corporation which does not keep the necessary books, accounts and records within the City, it shall be sufficient if such person, firm or corporation produces within the City such books, accounts and records or such information as shall be reasonably required by the City Manager for examination by the City Manager; or, in lieu thereof, said person, firm or corporation shall pay in advance, or as approved by the City Manager, such travel, lodging, meal and related expenses as shall reasonably be incurred by the City Manager or his or her duly authorized agent in examination of said books, accounts and records at such place where said books, accounts and records are kept.

(d) Coordinated audit.

(1) Any taxpayer licensed in the City and holding a similar sales tax license or business registration in another Colorado municipality that administers its own sales tax collection may request a coordinated audit as provided in this Article.

(2) Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the City Manager of such city, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities using local collection of their sales tax in which the taxpayer holds a current sales tax license or business registration.

(3) Except as provided in Paragraph (6) below, any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of limitation, if required, may be audited by the City during the twelve (12) months after request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

(4) If the City desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to Paragraph (3) above, the City Manager shall so notify the City Manager of the municipality whose notice of audit prompted the taxpayer's request within ten (10) days after receipt of the taxpayer's request for a coordinated audit. The City Manager shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

(5) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the City, the City Manager shall facilitate arrangements between this City and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The City Manager shall cooperate with
other participating municipalities to, whenever practicable, minimize the number of auditors that will be present on the taxpayer's premises to conduct the coordinated audit on behalf of the participating municipalities. Information obtained by or on behalf of those municipalities participating in the coordinated audit may be shared only among such participating municipalities.

(6) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the City, the City Manager shall, once arrangements for the coordinated audit between this City and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating municipalities for completion of the coordinated audit. The City Manager shall also propose a schedule for the coordinated audit.

(7) The City may conduct an audit in conjunction with another municipality.

(8) The coordinated audit procedure set forth in this Section shall not apply:

a. When the proposed audit is a jeopardy audit;

b. To audits for which a notice of audit was given prior to the effective date of this Section;

c. When a taxpayer refuses to promptly sign a waiver of limitation; or

d. When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in Paragraph (2) above.

(Ord. 2018-1 §1)

Sec. 4-53. Tax reports and returns.

(a) City's preservation of records. All reports and returns of taxes received by the Finance Department covered by this Article shall be preserved subject to the Colorado Municipal Records Retention Schedule, as adopted by the City.

(b) Confidential nature of returns. Except in accordance with judicial order, consent of the taxpayer, or as otherwise provided by law, the City Manager, the Finance Director and the City Attorney shall not divulge or make known in any way information disclosed in any document, report or return filed in connection with any of the taxes covered by this Article. The officials charged with the custody of such documents, reports and returns shall not be required to produce them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the City Manager in an action or proceeding under the provisions of any such taxing or open record statutes when the report of facts shown thereby are directly involved in such action or proceeding, in either of which events the Court may require the production of, and may admit into evidence, so much of said reports, or of the facts shown thereby, as are pertinent to the action or proceeding, and no more.

(c) Taxpayer request for records. Nothing contained in this Section shall be construed to prohibit the delivery to a person or his or her duly authorized representative of a copy of any return or report filed in connection with his or her tax, and such copies may be certified by the City Manager, and when so certified shall be evidence equal with and in like manner as the originals and may be received by the courts of the State as evidence of the contents.

(d) Publication of statistics. Nothing in this Section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof.
(e) Records available to authorized jurisdictions. Notwithstanding the provisions of this Section, the City Manager, in his or her discretion, may furnish the County Finance Director and his or her authorized personnel, to the State of Colorado Department of Revenue Executive Finance Director and his or her authorized personnel, to the taxing officials of the State political subdivisions and to the United States, any information contained in tax returns and related schedules and documents filed pursuant to this Article, or in the report of an audit or investigation made with respect thereto, provided that such information is to be used only for tax purposes.

(Ord. 2018-1 §1)

Sec. 4-54. Assessment; interest and penalties.

(a) Assessment. Subsection (b) below shall apply if the City Manager determines that any person, taxpayer or retailer has failed, neglected or refused:

(1) To collect all taxes due;

(2) To make a return and pay all taxes due;

(3) To remit the proper amount of tax due;

(4) To pay in full all taxes due because of negligence, fraud or on a regular basis; or

(5) To remit taxes due pursuant to an audit resulting in an assessment.

(b) Assessment notice and due date. Interest and penalties shall be assessed and the City Manager shall give to the delinquent person, taxpayer or retailer a written notice of final determination-assessment and demand for payment, which notice shall be sent via certified mail and shall state the full amount of taxes, interest and penalties due, which assessment of deficiency amount shall be due and payable within thirty (30) days of the date that such notice is sent by the City Manager, unless a hearing has been timely requested according to Section 4-57 below.

(c) Estimated assessment. If the City Manager is unable to audit the records of a taxpayer, either due to the taxpayer's refusal, lack of cooperation or lack of records; due to time constraints; or due to other reasons which the City Manager may reasonably determine, the City Manager shall make an estimate based upon such information as may be available and shall issue an assessment as provided in this Article. If a person, taxpayer or retailer neglects or refuses to make a return, the City Manager shall make an estimate, based upon such information as may be available, of the taxes due for the period for which such person is delinquent.

(d) Failure to file penalty. If a person, taxpayer or retailer neglects or refuses to make a return as required in this Article, a minimum penalty equal to the sum of fifteen dollars ($15.00) shall be paid for every return not filed that is required to be filed by this Article. If the penalty mentioned in Subsection (f) below is more than this fifteen-dollar amount, the Subsection (f) penalty shall control. This penalty does not apply to returns filed prior to the issuance of a notice of final determination-assessment and demand for payment. Interest shall not accrue on this minimum penalty.

(e) Mathematical error on tax returns. In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the City Manager shall notify the taxpayer by written notice of final determination-assessment and demand for payment of the amount of tax in excess of that shown in the return which is due and has been assessed, which notice shall be sent via certified mail. The taxpayer shall have no right of protest or appeal as in the matter of other assessments, but shall pay the tax due and assessed or file an amended
return to show the true amount of tax due within thirty (30) days of the date that such assessment is sent by the City Manager.

(f) Interest and penalty for failure to comply. Unless the taxpayer shows that its failure to comply fully with this Article is due to reasonable cause, which the taxpayer may prove in a hearing requested pursuant to this Article, there shall be added to all assessments a penalty of ten percent (10%) of the tax deficiency, or a minimum of fifteen dollars ($15.00). Interest in such case shall accrue and be collected at a rate of one and one-half percent (1½%) per month on the amount of such tax deficiency, not including the amount of the penalty, from the time the return was due.

(g) Penalty for fraud. If any deficiency in taxes paid is due to fraud with the intent to evade the tax, there shall be added to all assessments a penalty of one hundred percent (100%) of the tax deficiency. Interest on such deficiency shall accrue and be collected at a rate of one and one-half percent (1½%) per month on the amount of such deficiency, not including the amount of the penalty, from the time the return was due.

(h) Special penalty for repeated enforcement proceedings. In any assessment issued to a person, retailer or taxpayer against whom enforcement proceedings have been commenced in the past, a special penalty, in addition to all others provided in this Article, shall also be imposed. This special penalty shall be equal to the greater of two hundred fifty dollars ($250.00) or twenty-five percent (25%) of the tax deficiency. For purposes of this Subsection, enforcement proceedings shall mean:

(1) Issuance of a distress warrant;

(2) Filing of a lawsuit in the district or county court; or

(3) Three (3) occurrences of the revocation of the person's, retailer's or taxpayer's license or issuance of a summons to Municipal Court for the nonpayment of taxes or a combination of revocations and summonses.

(i) City Manager may waive penalty. The City Manager is hereby authorized to waive, for good cause shown, any penalty assessed as provided in this Article. Interest imposed in excess of the regular interest rate established by Paragraph 4-61(b)(2) below shall be deemed a penalty. If the City Manager finds that a taxpayer has, in good faith, paid tax to a retailer, the City Manager is hereby authorized to abate the interest and penalty in its entirety.

(j) Interest and penalty assessment. Interest and penalties prescribed under this Article shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the tax to which it is applicable. If any portion of a tax is satisfied by credit of an overpayment, then no interest or penalty shall be imposed under this Section on the portion of the tax so satisfied.

(Ord. 2018-1 §1)

Sec. 4-55. Jeopardy assessment.

(a) Jeopardy enforcement. If the City Manager finds that collection of the tax will be jeopardized by delay, in his or her discretion, he or she may declare the taxable period immediately terminated, determine the tax and issue notice and demand for payment thereof; and, having done so, the tax shall be due and payable forthwith, and the City Manager may proceed immediately to collect such tax as provided in Section 4-63 of this Article.

(b) Immediate enforcement action. In any other case wherein it appears that the revenue is in jeopardy, the City Manager may immediately issue demand for payment; and, regardless of the provisions of Sections 4-57 and 4-58 below, the tax shall be due and payable forthwith, and,
in his or her discretion, the City Manager may proceed immediately to collect said tax as provided in Section 4-63 of this Article.

(c) Security for payment. Collection under either Subsection (a) or (b) above may be stayed if the taxpayer gives such security for payment as shall be satisfactory to the City Manager.

(Ord. 2018-1 §1)

Sec. 4-56. Notice by mail.

The taxpayer shall at all times have the burden of ensuring that his or her correct mailing address, email address and fax number are on file with the City Manager. Any notice of final determination-assessment and demand for payment or denial of refund sent to the taxpayer pursuant to this Article shall be sent via certified mail. Other forms of notice may be sent via regular U.S. mail, fax or e-mail. If notice is not received by the taxpayer or the notice is returned by the post office as undeliverable or rejected by the taxpayer, such notice shall be deemed given on the date sent, and the City shall have no further obligation to complete service of the notice.

(Ord. 2018-1 §1)

Sec. 4-57. Hearings.

(a) Request for informal hearing. Any taxpayer may request in writing an informal hearing pursuant to Subsection (c) below on any tax imposed by reason of notice of final determination-assessment and demand for payment or by reason of denial of his or her claim for refund by application to the City Manager within thirty (30) days of the date that a notice of deficiency, assessment or denial of refund is sent by the City Manager. The request for hearing shall set forth the taxpayer's reasons for and the amount of the requested changes in the deficiency, assessment or denial of refund.

(b) Hearing time and place. The City Manager shall notify the taxpayer in writing of the time and place for such hearing fourteen (14) days prior thereto, unless the taxpayer requests shorter notice or an extension of time. In no event shall the hearing be held more than sixty (60) days after the City Manager's receipt of request for a hearing, unless the taxpayer agrees to a later date. In all cases, the hearing shall be held at the office of the City Manager.

(c) Informal hearing. Hearings shall be conducted in any manner acceptable to the taxpayer and the City Manager. Such hearing shall be informal, and no transcript, rules of evidence or filing of briefs shall be required, but the taxpayer may elect to submit a brief, in which case the City Manager may submit a brief. Such hearing shall be held and the hearing determination notice thereon issued within ninety (90) days after the City Manager's receipt of the taxpayer's written request therefor, except the period may be extended if the delay in holding the hearing or issuing the hearing determination notice thereon was occasioned by the taxpayer; but, in any such event, such hearing shall be held and the hearing determination notice thereon issued within one hundred eighty (180) days of the taxpayer's request in writing therefor.

(d) Hearing based on written brief. The taxpayer may also file a written brief and such other written materials or documents as he or she shall deem appropriate and request that the City Manager reconsider the deficiency without a hearing. The City Manager shall proceed to reconsider the deficiency in the same manner as if the written material submitted had been presented at a hearing pursuant to Subsection (c) above. The submission of written material shall be considered for all purposes the same as a request for and submission of the material at a hearing. The City staff and/or agents shall be permitted to respond in writing to the submittals of the taxpayer. Rebuttal submissions may be permitted at the discretion of the City Manager. The hearing determination notice, with respect to the hearing based on written brief, shall be issued within ninety (90) days after the
City Manager's receipt of the taxpayer's written request therefor, except the period may be extended if the delay in conducting the hearing or issuing the hearing determination notice thereon was occasioned by the taxpayer; but, in any such event, such hearing based on written brief shall occur and the hearing determination notice thereon issued within one hundred eighty (180) days of the taxpayer's request in writing therefor.

(e) Time limitation on a request for hearing. After the expiration of thirty (30) days from the date that the notice of final determination-assessment and demand for payment or denial of refund is sent, if the tax, interest and penalty, if any, has not been paid, if no request for hearing has been requested or no written brief has been filed by the taxpayer, then the notice of final determination-assessment and demand for payment previously sent shall constitute a final assessment of the amount of the tax specified, together with interest and penalty, or shall constitute a final denial of refund, as the case may be. The City Manager may promptly take necessary steps to collect all amounts owed. The taxpayer shall have no further right to a hearing, trial or appeal on the facts of its case.

(f) City Manager may adjust tax under question. Based on the evidence presented at any hearing or filed in support of the taxpayer's contentions, the City Manager may modify or abate in part or in full the tax and the interest and penalty related to such tax questioned at the hearing or may approve a refund.

(g) Hearing determination notices. After any hearing, upon rejection, in whole or in part, of the claim for refund or upon the finding by the City Manager that, on hearing the evidence, an assessment in whole or in part has been made against the taxpayer validly, the City Manager shall send a hearing determination notice to the taxpayer pursuant to Subsections (c) and (d) above setting forth the amount of claim for refund denied or the amount of deficiency assessment of taxes found due, stating therein the grounds for allowance or rejection in whole or in part.

(h) Tax due date after hearing. Unless an appeal is taken as provided in Section 4-58 below, the tax and fee, together with interest thereon and penalties, if any, shall be paid within thirty (30) days after the hearing determination notice is sent by the City Manager to the taxpayer.

(i) Compliance with Section 29-2-106.1, C.R.S. - Severability of invalid provisions. This Section shall be construed wherever possible as consistent with Section 29-2-106.1, C.R.S. To the extent that any provision in this Section is inconsistent with Section 29-2-106.1, C.R.S., that statute shall control. If any provision of this Section, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Section which can be given effect without the invalid provision or application, and to this end the provisions of this Section are declared to be severable.

(Ord. 2018-1 §1)

Sec. 4-58. Appeals.

The taxpayer may appeal the hearing determination notice of the City Manager issued pursuant to Section 4-57 above within thirty (30) days of the date that such determination is sent by the City Manager. Any such appeal shall be conducted in accordance with the provisions of Section 29-2-106.1, C.R.S., and shall be conducted de novo.

(Ord. 2018-1 §1)

Sec. 4-59. Refunds.

(a) Disputed sales tax. Should a dispute arise between the purchaser and seller as to whether or not any sale, service or commodity is exempt from taxation under this Article, nevertheless the seller shall collect and the purchaser shall
pay the tax and the seller shall issue to the purchaser a receipt or certificate, on forms prescribed by the City Manager, showing the names of the seller and the purchaser, the items purchased, the date, price, amount of tax paid and a brief statement of the claim of exemption.

(b) Refund allowed if exempt. A refund shall be made, or a credit allowed, for the sales tax so paid under dispute by any purchaser who has an exemption under this Article, provided that such refund shall be made by the City Manager after compliance with the following conditions precedent: Applications for refund must be made within sixty (60) days after the purchase of the goods whereon an exemption is claimed and must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and certificate issued by the seller and be made upon such forms as shall be prescribed and furnished by the City Manager, which forms shall contain such information as the City Manager shall prescribe.

(c) Refund disallowed. Upon receipt of such application, the City Manager shall examine the same with all due speed and shall give notice to the applicant by order in writing of his or her decision thereon. Aggrieved applicants, within thirty (30) days after such decision is sent, may petition the City Manager for a hearing on the claim in the manner provided in Section 4-57 above.

(d) Statute of limitations. With the exception of a written document that tolls the running of the statute of limitations, no refund shall be allowed or paid under any circumstances more than three (3) years after the City's receipt of sales taxes in question.

(e) Taxpayer's discovery of overpayment of use tax. A taxpayer may apply for a refund of payment of excess use taxes within sixty (60) days after discovery of the overpayment. The City Manager may deny such refund if he or she finds that the taxpayer discovered or reasonably should have discovered the overpayment more than sixty (60) days prior to the date of City Manager application for a refund. The taxpayer may petition the City Manager for a hearing on the claim in the manner provided in Section 4-57 above within thirty (30) days after the City Manager's denial of refund is sent to the taxpayer.

(f) Refunds not assignable. The right of any taxpayer to a refund under this Article shall not be assignable, and such application for refund must be made by the same person who purchased the goods and paid the tax thereon as shown in the invoice of the sale thereof, except as provided in Subsection (j) below. The City Manager may, upon receiving a properly executed release of claim from the taxpayer and evidence to substantiate that the tax was remitted in error to another municipality, issue a joint refund check in the name of the taxpayer and the municipality, provided that the municipality has entered into an agreement to grant similar privileges to the City.

(g) Burden of proof of exemption. The burden shall be on the taxpayer making such claim to prove that sales, services and commodities on which tax refunds are claimed, are exempt from taxation or were not purchased at retail. The City Manager may prescribe reasonable requirements for such proof.

(Ord. 2018-1 §1)

Sec. 4-60. Claims for recovery.

The intent of this Section is to streamline and standardize procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer or retailer to correctly pay, collect and remit sales tax to the City.

(a) When it is determined by the City Manager that sales tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the
retailer that taxes are being improperly collected and remitted and that, as of the date of the notice, the retailer must cease improper tax collections and remittances.

(b) The City may make a written claim for recovery directly to the municipality that received tax and/or penalty and interest owed to the City or, in the alternative, may institute procedures for collection of the tax from the taxpayer or retailer. The decision to make a claim for recovery lies in the sole discretion of the City. Any claim for recovery shall include a properly executed release of claim from the taxpayer and/or retailer releasing its claim to the taxes paid to the wrong municipality, evidence to substantiate the claim and a request that the municipality approve or deny, in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the City submits a claim for recovery may, for good cause, request an extension of time to investigate the claim, and approval of such extension by the City shall not be unreasonably withheld.

(c) Within ninety (90) days after receipt of a claim for recovery, the City shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received and shall notify the municipality submitting the claim in writing that the claim is either approved or denied in whole or in part, including the reasons for the decision. If the claim is approved in whole or in part, the City shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of approval. If a claim is submitted jointly by a municipality and a retailer or taxpayer, the check shall be made to the parties jointly. Denial of a claim of recovery may be made only for good cause.

(d) The City may deny a claim on the grounds that it has previously paid a claim for recovery arising out of an audit of the same taxpayer.

(e) The period subject to a claim of recovery shall be limited to the thirty-six-month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery. This period may be extended only if a written document was approved by the City Manager and taxpayer to toll the running of this thirty-six-month period.

(Ord. 2018-1 §1)

Sec. 4-61. Interest on overpayments and refunds.

(a) Interest allowance basis. No interest shall be paid upon any overpayment of sales tax unless:

(1) Such overpayment was made under protest;

(2) The taxpayer has requested a refund in writing within sixty (60) days after the tax was paid; and

(3) The taxpayer has provided the City with the records required by Section 4-52 of this Article.

(b) Payment of interest:

(1) Interest owed by the taxpayer on an audit may be applied against calculated interest that would be credited if allowed.

(2) Interest paid on an eligible overpayment of taxes pursuant to Subsection (a) herein under protest shall be paid at the interest rate set by the City Manager on January 1 of each year for the next succeeding year, as allowed by Section 39-21-110.5, C.R.S., which interest rate is currently defined to be the prime rate, as reported on the previous July 1, plus three (3) points, rounded to the next full percent.
Interest shall accrue only from the date of the taxpayer's application for a refund. If the refund is to be applied against other taxes owed by the taxpayer, interest shall not be paid on the refund for the period after the due date of the amount against which the credit is taken.

(c) Refund erroneously made to bear interest. Any portion of a sales tax or any interest, assessable penalty, additional amount or additional tax, which has been erroneously refunded, shall bear interest at the rate established in Subsection (b) above from the date of the payment of the refund.

(Ord. 2018-1 §1)

Sec. 4-62. False or fraudulent refund claim.

(a) Violation of Article. Any applicant for a refund under the provisions of this Article, or any other person who shall make any false statement in connection with an application for a refund of any taxes, shall be deemed guilty of a violation of this Article.

(b) Action to recover fraudulent claims. If any person is convicted of a violation of Subsection (a) above, such conviction shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully, and the City Manager is hereby empowered and directed to bring appropriate collection proceedings for recovery of such refunds.

(Ord. 2018-1 §1)

Sec. 4-63. City manager's remedies in case of nonpayment.

(a) So long as a final assessment remains unpaid, the City Manager may take any of the following enforcement procedures against the defaulting taxpayer:

(1) Revoke the taxpayer's sales tax license, as described in Section 4-68 of this Article.

(2) Issue a summons to the person, retailer or taxpayer to appear in the Municipal Court to collect all amounts owed on charges of violating this Article.

(3) Issue a distraint warrant pursuant to this Article.

(4) File a complaint in county or district court to collect all amounts owed.

(b) Regardless of the collection or enforcement procedures invoked by the City Manager, all unpaid taxes, interest and penalties shall be secured by a lien arising by operation of law as provided by this Article.

(Ord. 2018-1 §1)

Sec. 4-64. Enforcing collection by distraint.

(a) Warrant. The City Manager may issue a warrant under his or her own hand directed to any representative of the Finance Department, including the sheriff of any county of the State, commanding him or her to distraint, seize and sell the personal property of the taxpayer, except such personal property as is exempt from execution and sale by any provision of this Article, for the payment of the tax due together with interest and penalties accrued thereon and collection costs:

(1) When any deficiency in tax is not paid within thirty (30) days from the date of notice of final determination-assessment and demand for payment therefor and no hearing has been requested and no appeal from such deficiency assessment has been docketed with any district court of this State within said period;

(2) When any other amount of tax, interest or penalty is not paid within thirty (30) days from the date of the assessment and demand for payment thereof and no hearing has been requested and no appeal
from such assessment or demand has been docketed with any district court of the State within said period; or

(3) Immediately upon making of a jeopardy assessment or of the issuance of a demand for payment, as provided in Section 4-55 of this Article.

(b) Distraint seizure:

(1) The agent charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the agent making such distraint, shall be properly personally served on the owner or possessor of the goods or effects according to the Colorado Rules of Civil Procedure. If said notice cannot be served on the taxpayer within thirty (30) miles of the City, it shall be mailed to the taxpayer's last known address, return receipt requested.

(2) The agent shall forthwith cause to be published a notice of the time and place of sale, together with a description of the property to be sold, in some newspaper within the county wherein distraint is made, or, in lieu thereof and in the discretion of the City Manager, the agent or sheriff shall cause such notice to be publicly posted at the courthouse of the county wherein such distraint is made and copies thereof to be posted in at least two (2) other public places within said county.

(c) Distraint sale:

(1) The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of such notification to the owner or possessor of the property and the publication or posting of such notices. Said sale may be adjourned from time to time by said agent or sheriff if he or she deems it advisable, but not for a time to exceed ninety (90) days from the date first fixed for the sale. When any personal property is advertised for sale under distraint as aforesaid, the agent or sheriff making the seizure shall proceed to sell such property at public auction, offering the same at not less than a fair minimum price, including the expenses of making the seizure and of advertising the sale; and if the amount bid for the property at the sale is not equal to the fair minimum price so fixed, the agent or sheriff conducting the sale may declare the same to be purchased by him or her for the City. The property so purchased may be sold by the agent or sheriff under such regulations as may be prescribed by the City Manager.

(2) In any case of distraint for the payment of taxes, the real property, goods, chattels or effects so distrained shall be restored to the owner or possessor, if, prior to the sale, the amount due is paid, together with the fees and other charges or may be redeemed by any person holding a chattel mortgage or other evidence of right of possession.

(d) Certificate of sale and evidence of purchase. In all cases of sale, the agent or sheriff making the sale shall issue a certificate of sale to each purchaser, and such certificate shall be prima facie evidence of the right of the agent or sheriff to make such sale and the conclusive evidence of the regularity of his or her proceedings in making the sale, and shall transfer to the purchaser all right, title and interest of such delinquent in and to the property sold; and where such property consists of certificates of stock in the possession of the agent or sheriff, the certificate of sale shall be notice, when received, to any corporation, company or association of said transfer, and said certificate of such sale shall be authority for such corporation, company or association to record the transfer on its books and records; and where the subject of sale is securities or other evidences of debt, in the possession of the agent or sheriff,
the certificate of sale shall be good and valid
evidence of title in the person holding the same,
as against any other person. Any surplus remain-
ing above the taxes, interest and penalties and
all costs and all expenses of making the seizure
and of advertising the sale shall be returned to
the owner or such other person having a legal
right thereto, and, on demand, the City Man-
ager shall render an account in writing of the
sale. Expenses of a seizure include all reason-
able costs and expenses incurred by the City in
enforcing collection by distraint, including but
not limited to all personnel costs of the City.
(Ord. 2018-1 §1)

Sec. 4-65. Recovery of unpaid tax by action
of law.

(a) Action at law. The City Manager may
also treat any such taxes, interest and penalties
due and unpaid as a debt due the City from the
taxpayer personally. In case of failure to pay the
tax, or any portion thereof, or any interest
thereon, or any penalty when due, the City
Manager may receive at law the amount of such
taxes, interest and penalties and collection costs
in such county or district court of the county
wherein venue may be proper under the appli-
cable rule of civil procedure. The taxpayer's
return or the assessment made by the City Man-
ger as provided in this Article shall be prima
facie proof of the amount due.

(b) Writs of attachment. Such actions may
be actions in attachment, and writs of attach-
ment may be issued to the sheriff. In any such
proceedings, no bond shall be required of the
City Manager nor shall any sheriff require of
the City Manager an indemnifying bond for
executing the writ of attachment or writ of
execution upon any judgment entered in such
proceedings; and the City Manager may prose-
cute appeals or writs of error in such cases
without the necessity of providing a bond there-
for. The City Attorney, when requested by the
City Manager, may commence action for the
recovery of taxes due under this Article, and
this remedy shall be in addition to all other
existing remedies or remedies provided in this
Article.

(c) Civil action to enforce lien against real
property. In any case where there has been a
refusal or neglect to pay any tax due the City,
the City Manager may cause to be filed a civil
action to enforce the lien of the City. The Court
shall decree a sale of such real property and
shall order distribution of the proceeds from
the sale. The manner of sale, the period for and
manner of redemption from such sale and the
execution of any deeds of conveyance shall
proceed according to the laws relating to fore-
closures of mortgages upon real property. In
any such action, if equity so requires, the Court
may appoint a receiver of the real property
involved.

(d) Exhaustion of administrative remedies.
No lawsuit may be filed by the City until the
time for the taxpayer to exercise his or her
administrative remedies or to file an appeal has
expired. This remedy shall be in addition to all
other existing remedies available to the City. No
de novo trial of the facts shall be permitted if
the taxpayer has had a hearing before the City
Manager or has had the opportunity for such a
hearing but failed to exhaust his or her admin-
istrative remedies.
(Ord. 2018-1 §1)

Sec. 4-66. Sales tax constitutes lien.

(a) Any sales tax imposed by this Article,
together with the interest and penalties set forth
in this Article and the cost of collection, shall
be a first and prior lien upon:

(1) The goods, stock-in-trade and busi-
ness fixtures of or used by any taxpayer
under lease, title-retaining contract or other
contractual arrangement; and

(2) The real and personal property owned
or leased by any such taxpayer, including
personal property affixed to real property,
and shall take precedence on all such prop-
erty over other claims and mortgages.
(b) This lien shall arise upon the day the tax becomes due and payable and shall be extinguished by operation of law when the tax is paid in full, including any interest, penalty and collection costs.

(c) Whenever the business or property of any taxpayer subject to this Article shall be placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for property or other taxes, all taxes, interest and penalties imposed by this Article and for which said person is in any way liable under the terms of this Article shall be a prior and preferred lien against all the property of said taxpayer; and no sheriff, receiver, assignee or other officer shall sell the property of any person subject to this Article under process or order of any court, without first ascertaining from the City Manager the amount of any taxes due and payable under this Article. If there are any such taxes due, owing or unpaid, it shall be the duty of such officer to first pay the amount of said taxes out of the proceeds of said sale before making payment of any moneys to judgment creditors or other claims of whatsoever nature.

(d) At any time a tax has accrued but is unpaid, the City Manager may issue a notice of tax lien, setting forth the name of the taxpayer, the amount of the tax, interest and penalties and the date of the accrual thereof and that the City claims a first and prior lien therefor on the real and tangible personal property of the taxpayer. Said notice may be filed in the office of the clerk and recorder of any county in the State in which the taxpayer owns real or tangible personal property. Issuance of such notice and filing thereof shall be at the discretion of the City Manager and shall not affect the priority or validity of the lien provided by this Article, which arises by operation of law when the tax accrues and is payable.

(e) Any representative of the City Manager to whom a distraint warrant has been issued may file a notice of lien in such form as the City Manager may prescribe with the person in possession of any personal property or rights to property belonging to the taxpayer if not previously recorded with the County Clerk and Recorder. The City Manager may release said lien as to any part or all of the property or rights to property covered by such lien upon such terms as he or she may deem proper.

(f) Upon payment in full of taxes, interest and penalties, the City Manager shall release any recorded tax lien in the same manner as mortgages and judgments are released.

(Ord. 2018-1 §1)

Sec. 4-67. Compromise.

(a) Compromise limitation. After an assessment has become final because the taxpayer has waived his or her right to a hearing or because the hearing officer has issued his or her final decision, the City Manager may compromise to the extent of one thousand dollars ($1,000.00) any collection proceeding arising under this Article.

(b) Compromise record. Whenever a compromise, in value or valuation, of one thousand dollars ($1,000.00) or less is made by the City Manager in any case, there shall be placed on file in the office of the City Manager the opinion of the City Manager with his or her reasons therefor, which may include financial inability of the taxpayer to pay a greater amount, with a statement of:

1. The amount of tax assessed;

2. The amount of interest and penalty assessed; and

3. The amount paid in accordance with the terms of the compromise.

(Ord. 2018-1 §1)

Sec. 4-68. Purchasing license.

It shall be unlawful for any person to engage in the business of selling at retail, as the same is...
defined in this Article, without first having obtained a license therefore, which license shall be granted and issued by the City Clerk and shall be in force and effect until December 31 of the year in which it is issued unless sooner revoked. Such license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of such business, and the location, including the street number of such business, and such other facts as the City Clerk may require. (Ord. 2018-1 §1)

Sec. 4-69. Renewal of license.

It shall be the duty of each such licensee on or before January 1 of each year during which this Article remains in effect, to obtain a renewal thereof if the licensee remains in retail business or is liable to account for the tax herein provided, but nothing herein contained shall be construed to empower the City Clerk to refuse such renewal except the revocation for cause of the licensee's prior license. (Ord. 2018-1 §1)

Sec. 4-70. Costs of license.

For each license issued, a fee shall be paid pursuant to a separate resolution setting the City of Black Hawk Fee Schedule, which shall accompany the application. (Ord. 2018-1 §1)

Sec. 4-71. Amendments.

The City Council may amend, alter or change this Article, except as to the rate of tax herein imposed, subsequent to adoption by a majority vote of the City Council. Unless required by Article X, Section 20, of the Colorado Constitution, such amendment, alteration or change need not be submitted to the electors of the City for their approval. (Ord. 2018-1 §1)

Sec. 4-72. Sale or purchase of business or property.

(a) New license required. Any sale, transfer or purchase of an interest in a business enterprise by any persons, as defined in this Article, where the respective interest of the person purchasing or selling as a result of the transaction has changed in any degree, requires, in the case of a retailer or other person required to be licensed under this Article, the issuance of a new license.

(b) Must file final return. Any person, retailer or taxpayer who shall sell out his or her business or stock of goods or all the assets of a business to another person, or any person or taxpayer who quits business, shall make out the return as required by this Article and remit all taxes due within fifteen (15) days after the business or stock of goods is sold or the taxpayer quits business.

(c) Tax due on business property. The City tax shall be remitted on the purchase price paid for tangible personal property that is acquired with the purchase, transfer of title or transfer of possession of a business, with the exception of items to be resold in the ordinary course of business operations of the new business. The tax shall be based on the price paid for such chattels as recorded in the bill of sale or agreement and constituting a part of the total transaction at the time of the sale or transfer, provided that the valuation is as great as or greater than the fair market value of such merchandise or chattels. Where the transfer of ownership is a package deal made by a lump-sum transaction, the tax shall be paid on the book value if no determination has been made. When a business is taken over in return for the assumption of outstanding indebtedness owed by former owners, the tax shall be paid on the fair market value of all taxable tangible personal property acquired by the purchaser.

(d) All prior taxes are due. Taxes due upon the sale of a business or stock of goods include all sales taxes which were collected or should have been collected prior to the sale.
(e) Purchaser to withhold payment until tax paid. The purchaser or successor to the business, stock of goods or assets shall withhold sufficient of the purchase money to cover all of said taxes until such time as the former owner produces a receipt from the City Manager showing that all taxes have been paid in full.

(f) Purchaser liable for prior owner's unpaid tax. Purchasers of a business are liable for any unpaid tax of a predecessor. Retailers or consumers having outstanding accounts on which sales tax has not been remitted must compute and pay the tax at the time of sale.

(g) Seller and seller's agent liable for tax. The seller or his or her agent will be held liable for tax remittance on the sale of business in the event the purchaser fails to remit the tax due on the purchase.

(h) Seller and purchaser both liable. Until all taxes due under this Section are paid in full, both the former owner and the purchaser shall remain personally liable thereon and subject to all collection proceedings available under this Article. Action by the City against the former owner shall not prevent the exercise by the City of all remedies provided in this Article against the successor owner.

(i) Delinquent taxes are a lien on the property. Any person who takes or purchases personal or real property under lease, title-retaining contract or other contract arrangement, by purchase, foreclosure, sale or otherwise, takes the same subject to the lien for any delinquent taxes owed by the original owner and shall be liable for the payment of all delinquent taxes, interest, penalty and collection costs of such prior owner not, however, exceeding the value of the property so taken or acquired. Any person who takes title to or possession of any real property upon which a tax is owed takes said property subject to the lien for said delinquent tax and shall be liable for the payment thereof to the extent of the tax, interest, penalties and collection costs.

(Ord. 2018-1 §1)

Sec. 4-73. Reserved.

Sec. 4-74. Certificate of discharge.

(a) Certificate of discharge subject to lien. If any property, real or personal, under the law, shall be subject to a lien for the payment of any tax due the City, the City Manager may issue a certificate of discharge of any part of the property subject to the lien if he or she finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect to such tax and the amount of all prior liens upon such property.

(b) Certificate of discharge to part of property. If any property, real or personal, under the law, shall be subject to a lien for the payment of any tax due the City, the City Manager may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the City Manager in part satisfaction of the liability in respect to such tax an amount determined by the City Manager, which shall not be less than the value, as determined by him or her, of the interest of the City in the part to be so discharged.

(c) How values determined. In determining such values, the City Manager shall give consideration to the fair market value of the part to be so discharged and to such lien thereon as have priority to the lien of the City.

(d) Certificate of release conclusive. A certificate of release or of partial discharge issued under Subsection (a) shall be held conclusive that the lien of the City upon the property released therein is extinguished, but shall not extinguish or release any portion of the lien or property not specified in the release.

(Ord. 2018-1 §1)
Sec. 4-75. Closing agreements.

(a) Satisfaction of liability. For the purpose of facilitating the settlement and distribution of estates, trusts, receiverships, other fiduciary relationships and corporations in the process of dissolution or which have been dissolved, the City Manager may agree with the fiduciary or surviving directors upon the amount of taxes due from the decedent or from the decedent's estate, the trust, receivership or other fiduciary relationship, or corporation, for any of his, her or its taxable periods, under the provisions of the taxes covered by this Article and except upon a showing of fraud, malfeasance or misrepresentation of a material fact, payment in accordance with such agreement shall be full satisfaction of the taxes for the taxable periods to which the agreement related.

(b) Personal liability. Except as provided in Subsection (d) below, any personal representative of a decedent or of the estate of a decedent, or any trustee, receiver or other person acting in a fiduciary capacity, or any City Manager of a corporation in the process of dissolution or which has been dissolved, who distributes the estate or fund in his or her control without having first paid any taxes covered by this Article due from such decedent, decedent's estate, trust estate, receivership or corporation, covered by this Article and which may be assessed within the time limited by this Article, shall be personally liable to the extent of the property so distributed, for any unpaid taxes of the decedent, trust estate, fund or corporation, covered by this Article and which may be assessed within the time limited by this Article.

(c) Notification of liability. The distributee of a decedent's estate, or a trust estate or fund or the stockholder of any dissolved corporation who receives any of the property of such decedent's estate, trust estate, fund or corporation, shall be liable to the extent of the decedent, trust estate, fund or corporation, covered by this Article and which may be assessed within the time limited by this Article. Notice to such distributee or stockholder shall be given in the same manner and within the time limit which would have been applicable had there been no distribution.

(d) Limitation of liability.

(1) In case tax covered by this Article is due from a decedent or his or her estate, or by a corporation, in order for personal liability under Subsection (b) above to remain in effect, determination of the tax due shall be made and notice and demand therefor shall be issued within three (3) years after written request for such determination, filed after the filing of the decedent's final return or filed after the filing of the return of the decedent's estate with respect to which such request is applicable, by any personal representative of such decedent or by the corporation, filed after the filing of its return; however, a request under this provision shall not extend the period of limitation otherwise applicable.

(2) This Subsection will not apply in the case of a corporation unless:

a. Such request notifies the City Manager that the corporation contemplates dissolution at or before the expiration of such three-year period;

b. The dissolution is begun in good faith before the expiration of such three-year period; and

c. The dissolution is completed.

(3) Upon the expiration of said three-year period, without determination being made and notice and demand being issued, the personal representative or representative
of the decedent and the City Managers of
the corporation no longer will be liable un-
der the provisions of Subsection (b) above.
(Ord. 2018-1 §1)

Sec. 4-76. Limitations.

(a) General limitations.

(1) Statute of limitations. Except as pro-
vided in this Section, the taxes for any pe-
riod, together with the interest thereon and
penalties with respect thereto, imposed by
this Article shall not be assessed or credit
taken, nor shall any notice of lien be filed,
distraint warrant issued or suit for collection
be instituted, or any other action to collect
the same be commenced, more than three (3)
years after the date on which the tax was or
is payable; nor shall any lien continue after
such period, except for taxes assessed before
the expiration of such period, notice of lien
with respect to which has been filed prior to
the expiration of such period. In the case of
a failure to make a return or in the case of a
false or fraudulent return with intent to evade
tax, the tax, together with interest and pen-
alties thereon, may be assessed, or proceed-
ings for the collection of such taxes may be
begun at any time. The commencement of
collection proceedings, including the mail-
ing of a notice of audit, shall toll the run-
ing of the statute of limitations.

(2) Date fixed. For purposes of this Sec-
ton, a tax return filed before the last day
prescribed by law or by regulation promul-
gated pursuant to law for the filing thereof
shall be considered as filed on such last day.

(3) Payment arrangement. Where, be-
fore the expiration of the time prescribed in
this Section for the assessment of tax, both
the City Manager and the taxpayer have
consented in writing to any assessment after
such time, the tax may be assessed at any
time prior to the expiration of the period
agreed upon. The period so agreed upon
may be extended by subsequent agreements
in writing made before the expiration of the
period previously agreed upon or by the
commencement of collection proceedings
made before the expiration of the period
previously agreed upon. Additional interest
shall be paid on taxes due at the rate estab-
lished in Paragraph 4-61(b)(2) of this Arti-
cle.

(4) Revision qualification. Nothing in this
Section shall be construed to limit any right
accrued or to revive any liability barred by
any statute at the date this Article becomes
effective.

(b) Taxes held in trust. All sums of money
paid by the purchaser to the retailer as taxes
imposed by this Article shall be and remain in
public money, the property of the City, in the
hands of such retailer, and he or she shall hold
the same in trust for the sole use and benefit of
the City, until paid to the City, and for failure to
so pay to the City, such retailer shall be pun-
ished as provided by law. Thus, the statute of
limitation set forth in this Article does not ap-
ply to collections of public money in the pos-
session of the retailer, and such moneys are
collectable at any time after their due date upon
demand of the City Manager. Bankruptcy will
not excuse unremitted taxes collected in trust.
(Ord. 2018-1 §1)

Sec. 4-77. Tax returns; content,
consolidation and reporting
periods.

(a) Tax return content and form. The re-
turns to be filed by the taxpayer, or the taxpay-
er's trustee, manager, officer or director, shall
contain such information and be completed in
such manner and upon such forms as the City
Manager may prescribe. When a return filed by
a taxpayer does not include a signature, a cor-
rect City account number or any other informa-
tion required by the City Manager, the City
Manager has the right to send back to the
taxpayer the return and payment. The City Manager may consider an improperly filed return to be not filed with the City. A valid digital signature, or the equivalent thereof, on a filed return transmitted electronically over the Internet or transmitted by other similar means is accepted and held as a written signature. Signing a return over the Internet can be done by any means acceptable to the City Manager. A signature on a return sent via facsimile is accepted and held as a written signature.

(b) Reporting periods.

(1) Retailers with an average total City tax due per month of three hundred dollars ($300.00) or more shall report and remit taxes on a monthly basis. However, upon request of the retailer and upon a finding by the City Manager that monthly remittance will impose an undue hardship on the retailer, the City Manager may authorize and accept remittance at other intervals.

(2) With permission of the City Manager, retailers whose average monthly total City tax collected is less than three hundred dollars ($300.00) may make returns and remit taxes on a quarterly basis.

(3) The amount of total City tax due per month triggering monthly or quarterly filing requirements, as set forth in Paragraphs (1) and (2) above, may be evaluated annually and amended by resolution of the City Council.

(4) With permission of the City Manager, nonretail businesses and home-based businesses required to file a return may make returns and remit taxes on an annual basis.

(5) If any taxpayer who has been granted permission to file returns and pay taxes on other than a monthly basis becomes delinquent, the City Manager may revoke authorization for such alternate method of report-
any officer, director, partner, managing partner or manager of a taxpayer shall be personally liable for any violations under this Code.

(d) Summons to court for violations of Code. The City Manager, including personnel of the Finance Department, have the authority of peace officers, as that term is defined under the Colorado Municipal Court Rules, to summons into the Municipal Court any person who may be in violation of this Code as set forth under Subsection (a) above.

(Ord. 2018-1 §1)

Sec. 4-79. Violations.

It shall be unlawful for any person to violate any of the provisions of this Code. Any violation of this Code shall be punishable by a fine of not more than the amount set forth in Section 1-73 or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(Ord. 2018-1 §1)

Sec. 4-80. Sales tax supporting Gilpin County School District RE-1; termination.

The additional one and one-half (1½) percent sales tax approved by voters in the 2008 special election for the purpose of providing financial support to the Gilpin County School District RE-1 (the "School District"), as established by Subsection 4-41(d) of this Article, shall terminate on the January 1 or July 1 that occurs at least sixty (60) days after the City's determination that any one (1) of the following conditions has occurred:

(a) The School District increases its mill levy above its 2008 level, unless such increase is required to meet obligations to the holders of the School District bonds that are outstanding as of June 1, 2008, or bonds issued to refund such bonds issued in compliance with Paragraph (2) below, or unless such increase is otherwise required by state or federal law; or

(b) The School District refunds the bonds of the School District that are outstanding as of June 1, 2008, and, in connection with such refunding, one (1) of the following conditions occurs:

(1) The maturity date of the bonds is extended beyond the last maturity date of the bonds of the School District outstanding as of June 1, 2008;

(2) The debt service payable in any year by the School District is increased;

(3) After the payment in full of bonds of the School District that are outstanding as of June 1, 2008, or bonds issued to refund such bonds issued in compliance with Paragraph (1) above, the total mill levy imposed by the School District exceeds eight (8) mills unless the mills are otherwise required by state or federal law;

(4) The School District merges with any school district located outside of the County or extends its boundaries outside of the County without the City's consent;

(5) A sales or use tax or lodging tax is imposed by the County;

(6) A constitutional amendment or other mechanism applicable to the City is adopted that amends the constitutional allocation of gaming funds to the City received pursuant to Article XVIII, Section 9(5)(B), of the Colorado Constitution, and results in a decrease in the funds allocated to the City as a result of limited gaming; or

(7) All or part of the territory in the County is included within the boundaries of the Regional Transportation Dis-
trict or any other governmental or quasi-
governmental entity created to finance
transportation or mass transit.
(Ord. 2018-1 §1)

ARTICLE V

Use Tax

Sec. 4-81. Amount imposed.

(a) There is imposed a six-percent (6%) use
tax to be imposed for the privilege of storing,
using, distributing, or consuming within the
City any article of tangible personal property
or any taxable service purchased, including, with-
out limitation, construction and building mate-
rials, and on motor or other vehicles on which
registration is required which are purchased at
retail.

(b) Effective January 1, 2009, one and one-
half (1½) percent of the use tax imposed in
Subsection (a) above shall be for the purpose of
providing financial support to the Gilpin County
School District RE-1, and it shall expire along
with the sales tax imposed by Subsection 4-41(d)
of this Chapter upon the occurrence of any one
(1) of the conditions set forth in Section 4-80 of
this Chapter.
(Ord. 2018-1 §2; Ord. 2018-22 §1)

Sec. 4-82. Exemptions.

The use tax shall not apply to:

(a) The storage, use or consumption of
any tangible personal property, the sale of
which is subject to a retail sales tax imposed
by the City;

(b) The storage, use or consumption of
any tangible personal property purchased
for resale in the City either in its original
form or as an ingredient of a manufactured
or compounded product, in the regular course
of a business;

(c) The storage, use or consumption of
tangible personal property brought into the
City by a nonresident thereof for his or her
own storage, use or consumption while tem-
porarily within the City; however, this ex-
emption does not apply to the storage, use or
consumption of tangible personal property
brought into the State by a nonresident to be
used in the conduct of a business in this State;

(d) The storage, use or consumption of
tangible personal property by the United
States government or the state government,
or its institutions or political subdivisions, in
their governmental capacities only, or by
religious or charitable corporations in the
conduct of their regular religious or charita-
ble functions;

(e) The storage, use or consumption of
tangible personal property by a person en-
engaged in the business of manufacturing or
compounding for sale, profit or use any ar-
ticle, substance or commodity, which tangi-
ble personal property enters into the process-
ing of or becomes an ingredient or
component part of the product or service
which is manufactured, compounded or fur-
nished, and the container, label or the fur-
nished shipping case thereof;

(f) The storage, use or consumption of
any tangible personal property consisting or
food or beverage items that are provided on
a complimentary basis so that no retail sales
tax is imposed by the City;

(g) The storage, use or consumption of
tangible personal property and household
effects acquired outside of the City and
brought into it by a nonresident acquiring
residency;

(h) The storage or use of a motor vehicle
if the owner is or was, at the time of pur-
chase, a nonresident of the City and he or
she purchased the vehicle outside of the City
for use outside of the City and actually so used it for a substantial and primary purpose for which it was acquired, and he or she registered, titled and licensed the motor vehicle outside of the City;

(i) The storage, use or consumption of any construction materials and motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to July 1, 1991;

(j) The storage, use or consumption of any construction materials required or made necessary in the performance of any construction contract bid, let or entered into at any time prior to July 1, 1991;

(k) The storage or use of a motor vehicle upon which registration is required, if the owner is or was, at the time of purchase, a resident of the City; and

(l) The storage, use or consumption of any construction materials used in a project funded by the City pursuant to the City of Black Hawk Community Restoration and Preservation Fund Guide to Programs.

(Ord. 2018-1 §2; Ord. 2018-22 §1)

Sec. 4-83. Collection, administration and enforcement.

(a) The use tax imposed by this Article upon motor and other vehicles on which registration is required which are purchased at retail shall be collected by the authorized agent of the County Department of Revenue.

(b) The use tax on construction and building materials stored, used or consumed within the City must be paid upon the issuance of a building permit by the City. In no event shall any certificate of occupancy be issued prior to the full payment to the City of the use tax due and owing pursuant to this Article. The amount of the use tax for construction and building materials shall be as follows:

(1) The amount collected will be based on six percent (6%) of the job material valuation. The job material valuation is established as one-half (½) of the total value of the job. The total value of the job equals all the construction work for which the permit is issued, as well as all finishing work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire extinguishing systems and any other permanent equipment.

(2) If the taxpayer can prove the actual total value of the job, the total value shall be based on the actual value of the construction materials. Otherwise, a City building official shall determine the value of the construction materials.

(Ord. 2018-1 §2; Ord. 2018-22 §1)

Sec. 4-84. Credit for sales or use taxes previously paid to another municipality.

For transactions consummated on or after July 1, 1991, the City's use tax shall only apply to the extent the City's use tax is in excess of a lawfully imposed and paid sales or use tax of another municipality imposed on the purchase, storage, use or consumption of any article of tangible personal property. A credit shall be granted against the City's use tax with respect to the person's storage, use or consumption in the City of tangible personal property, the amount of the credit to equal the tax actually paid by him or her by reason of the lawful imposition of a sales or use tax of another municipality on the purchase or use of the property. The amount of the credit shall not exceed six percent (6%).

(Ord. 2018-1 §2; Ord. 2018-22 §1)
Sec. 4-85. Nonapplicability to use or consumption occurring more than three years after most recent sale.

For transactions consummated on or after July 1, 1991, the City's use tax shall not be imposed with respect to the use or consumption of tangible personal property within the City which occurs more than three (3) years after the most recent sale of the property if, within the three (3) years following the sale, the property has been significantly used within the State for the principal purpose for which it was purchased.

(Ord. 2018-1 §2)

Sec. 4-86. Proration as applied to certain construction equipment.

(a) Construction equipment which is located within the boundaries of the City for more than one hundred eighty (180) consecutive days shall be subjected to the full applicable use tax of the City.

(b) With respect to transactions consummated on or after July 1, 1991, construction equipment which is located within the boundaries of the City for one hundred eighty (180) consecutive days or less shall be subjected to the City's use tax in an amount calculated as follows: multiply the purchase price of the equipment by a fraction, the numerator of which is one (1) and the denominator of which is twelve (12), and the result shall be multiplied by six percent (6%) (purchase price × 1/12 × .06).

(c) Where Subsection (b) above applies, the credit provisions of Section 4-84 shall apply when the aggregate sales and use taxes legally imposed by and paid to another municipality on any such equipment equals six percent (6%).

(d) In order to come within the provisions of Subsection (b) above, the taxpayer shall comply with the following procedures:

(1) Prior to or on the date the equipment is brought into the City, the taxpayer shall file with the Building Department an equipment declaration on a form provided by the City. The declaration shall state the dates the taxpayer anticipates the equipment will be located within and removed from the City, a description of each anticipated piece of equipment, the actual or anticipated purchase price of each anticipated piece of equipment, and such other information as reasonably deemed necessary by the City.

(2) No less than once every ninety (90) days after the equipment is brought into the City, the taxpayer shall file an amended equipment declaration with the City. The equipment declaration shall reflect any changes in any previous equipment declaration. If the project lasts less than ninety (90) days, the taxpayer shall file an amended equipment declaration within ten (10) days after substantial completion of the project.

(3) If the purchase price of the equipment is less than two thousand five hundred dollars ($2,500.00), the taxpayer does not have to report the equipment on the equipment declaration.

(4) If the equipment declaration is given, it shall be presumed that any construction equipment that is temporarily brought into the City for a construction project, and that has a customary purchase price under two thousand five hundred dollars ($2,500.00), was purchased in a jurisdiction having a local sales or use tax as high as six percent (6%) and that the local sales or use tax was paid. The City shall have the burden of proving that the local sales or use tax was not paid in any proceeding before the City, the Executive Director of the Department of Revenue or the District Court.

(e) If the taxpayer fails to comply with Subsection (d) above, the taxpayer may not avail himself or herself of Subsection (b) above, and shall be subject to Subsection (a) above. How-
ever, substantial compliance with Subsection (d) above shall allow the taxpayer to avail himself or herself of Subsection (b) above.

(Ord. 2018-1 §2; Ord. 2018-22 §1)

Sec. 4-87. Collection of taxes due; limitation of actions.

(a) The use tax, interest and penalties shall be assessed within three (3) years after the return was filed, whether the return was filed on or after the date prescribed. The City shall not file a lien, assess a use tax, issue a distraint warrant, file suit for collection, or institute any action to collect the use tax, interest and penalties more than three (3) years after the return was filed. A use tax lien shall not continue for more than three (3) years after the use tax is due, except when use taxes were assessed before the expiration of the three-year period, and a notice of lien was filed prior to the expiration of the three-year period, in which case the lien shall continue only for one (1) year after the expiration of the three-year period.

(b) If the taxpayer falsely or fraudulently files a return with intent to evade the use tax or fails to file a return, the use tax, and the interest and the penalties, may be assessed or collection proceedings instituted at any time.

(c) Before the expiration of the three-year limitation period, the taxpayer and the Building Department may agree in writing to an extension, and the period agreed upon may be extended by subsequent written agreements.

(Ord. 2018-1 §2)

Sec. 4-88. Refunds; limitation of actions.

(a) A taxpayer that claims an exemption but still pays the use tax shall file an application for a refund within sixty (60) days after the storage, use or consumption of the goods for which the refund is claimed.

(b) A taxpayer that pays the use tax in error or by mistake shall file an application for a refund within three (3) years after the storage, use or consumption of the goods for which the refund is claimed.

(Ord. 2018-1 §2)

Sec. 4-93. Collection; enforcement; interest and penalties.

(a) The administration of all provisions of this Article is hereby vested in and shall be exercised by the City Manager, or the City Manager's designee, who may prescribe forms and formulate and promulgate appropriate rules and regulations to effectuate the purpose of this Article.

(b) If a person neglects or refuses to file a use tax return or to pay the required use tax, the Building Department shall estimate the amount of use taxes due for the period that the taxpayer is delinquent based upon available information. Enforcement, collection and penalties for failure to pay the City’s use tax or for failure to make a return and remit the correct amount of tax required by this Article, and the procedures for enforcing such penalties, shall be the same as those prescribed in Article IV of this Chapter with respect to the City sales tax.

(Ord. 2018-1 §2)

Sec. 4-94. Other remedies.

Nothing in Sections 4-89 through 4-93 of this Article shall preclude the City from utilizing any other applicable penalties or remedies for the collection or enforcement of use taxes.

(Ord. 2018-1 §2)

Sec. 4-95. Final decision of City; appeals; posting of bonds.

(a) Within fifteen (15) days after filing a notice of appeal, the taxpayer shall file with the District Court a surety bond in twice the amount of the use taxes, interest and other charges stated in the final decision by the Building De-
partment which are contested on appeal. The taxpayer may, at his or her option, satisfy the surety bond requirement by a savings account or deposit in or a certificate of deposit issued by a state or national bank or by a state or federal savings and loan association, in accordance with the provisions of Section 11-35-101(1), C.R.S., equal to twice the amount of the use taxes, interest and other charges stated in the final decision by the Building Department.

(b) The taxpayer may, at his or her option, deposit the disputed amount with the District Court in lieu of posting a surety bond. If the amount is deposited, no further interest shall accrue on the deficiency contested during the pendency of the action. At the conclusion of the action, after appeal to the Supreme Court or the Court of Appeals or after the time for such appeal has expired, the funds deposited shall be, at the direction of the court, either directed to the Building Department and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed pursuant to Section 4-93 of this Article. No claim for refund of amounts deposited with the Building Department need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the court.

(Ord. 2018-1 §2)

Sec. 4-97. Alternative dispute resolution procedure; deficiency notice or claim for refund.

For transactions consummated on or after July 1, 1991, the taxpayer may elect a state hearing of the Building Department's final decision on a deficiency notice or claim for refund pursuant to the procedure set forth in this Section.

(a) As used in this Section, state hearing means a hearing before the Executive Director of the Department of Revenue or delegate thereof, as provided in Section 29-2-106.1(3), C.R.S.

(b) When the City asserts that use taxes are due in an amount greater than the amount paid by a taxpayer, the City shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice shall state the additional use taxes due. The deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has the right to elect a state hearing on the deficiency pursuant to Section 29-2-106.1(3), C.R.S. The taxpayer shall also have the right to elect a state hearing on the City's denial of the taxpayer's claim for a refund of use tax paid.

(c) The taxpayer shall request the state hearing within thirty (30) days after the taxpayer's exhaustion of local remedies. The taxpayer shall have no right to a hearing if he or she has not exhausted local remedies or if he or she fails to request a hearing within the time period provided for in this Subsection. For purposes of this Subsection, exhaustion of local remedies means:

(1) The taxpayer has timely requested in writing a hearing before the local government, and the local government has held a hearing and issued a final decision. The hearing shall be informal and no transcript, rules of evidence or filing of
briefs shall be required. However, the taxpayer may elect to submit a brief, in which case the local government may submit a brief. The hearing shall be held and a final decision issued within ninety (90) days after the local government's receipt of the taxpayer's written request, except the period may be extended if the delay in holding the hearing or issuing the decision was caused by the taxpayer, but, in any event, the hearing shall be held and the decision issued within one hundred eighty (180) days of the taxpayer's written request; or

(2) The taxpayer has timely requested in writing a hearing before the City and the City has failed to hold the hearing or has failed to issue a final decision within the time periods prescribed in Subparagraph (a) above.

(d) If a taxpayer has exhausted his or her local remedies as provided in Subsection (c) above, the taxpayer may request a state hearing on the deficiency notice or claim for refund, and the request shall be made and the hearing shall be conducted in the same manner as set forth in Sections 29-2-106.1(3) through (7), C.R.S.

(e) If the deficiency notice or claim for refund involves only the City, in lieu of requesting a state hearing, the taxpayer may appeal the deficiency notice or denial of a claim for refund to the District Court as provided in Section 29-2-106.1(8), C.R.S., provided that the taxpayer complies with the procedures set forth in Subsection (c) above.

(f) If the City reasonably finds that the collection of use tax will be jeopardized by delay, the City may utilize the procedures set forth in Section 39-21-111, C.R.S.

Secs. 4-98—4-110. Reserved.

ARTICLE VI

Parking Fees

Sec. 4-111. Authority and applicability.

(a) The City Council has the authority to adopt this Article pursuant to the City Charter.

(b) This Article shall only apply to nonresidential districts of the City. This Article shall not apply to any real property that is zoned for residential uses. (Ord. 91-25 §1; Ord. 97-7 §1; Ord. 99-11 §1; Ord. 2015-6, §5)

Sec. 4-112. Intent and purpose.

(a) This Article is intended to be consistent with Chapter 16 of this Code.

(b) The purpose of this Article is to regulate the use and development of land so as to assure that new development bears a proportionate share of the cost of capital expenditures necessary to provide parking facilities in the City as contemplated by Chapter 16 of this Code and any amendments thereto. (Ord. 91-25 §2; Ord. 97-7 §1)

Sec. 4-113. Definitions.

As used in this Article, the following words shall be construed to have the meanings defined below:

Certificate of occupancy means an official document or certification which is issued by the Building Official and which authorizes the occupation, temporary or otherwise, of a building or structure. In the case of a change in use or occupancy of an existing building or structure, the term shall specifically include a temporary certificate of occupancy, certificate of occupancy and occupancy permits, as those permits are defined or required by ordinance.
**City Manager** means the City Manager and/or any municipal officials that he or she may designate to administer the various provisions of this Article.

A dwelling unit is a building or portion of a building intended as living quarters for a single family, having a single set of kitchen facilities (a stove plus either or both a refrigerator and sink) not shared with any other unit; or quarters for up to six (6) persons in a lodging house, dormitory, congregate dwelling or similar group dwelling.

Existing building means a building, structure or portion thereof built prior to the effective date of the ordinance codified in Chapter 16 of this Code.

A feepayer is a person who applies to the City for the issuance of a certificate of occupancy for the type of nonresidential land development activity specified in Subsection 16-263(a) of this Code.

Floor area means the measurement of the floor area used in calculating the required number of parking spaces. It shall include the gross floor area of the use served, including storage, restrooms, hallways, etc., as measured from the outside dimensions of the use. In mixed use facilities, calculations shall be based on gross square footage, and uses which are shared by more than one (1) use shall be prorated based on the area of each use.

Parking agreement means an agreement that is recorded against real property that is owned by the feepayer and used in whole or in part to provide the parking spaces that are required pursuant to Subsection 16-263(a) of this Code (the "parking property"), which agreement limits the use of the parking property to parking for the land development activity that is generating the need for the required parking spaces, until such time as the feepayer pays the parking fee described herein or provides other real property for the required parking spaces that meets the requirements of this Chapter and Chapter 16. The City Attorney shall review and approve the parking agreement in the form set forth in Appendix A attached to the ordinance codified herein. A standard form parking agreement form is available from the Planning Department. (Ord. 91-25 §3; Ord. 94-1 §1; Ord. 97-7 §1; Ord. 97-27 §1; Ord. 99-11 §2)

Sec. 4-114. Imposition of parking fees.

(a) Any person who, after the effective date of the adopting ordinance codified herein, applies for a certificate of occupancy for one (1) of the nonresidential land use types specified in Subsection 16-263(a) of this Code shall pay a parking fee to the extent parking is not provided on-site or pursuant to a valid parking agreement.

(b) Temporary parking spaces acquired by the feepayer shall not alleviate the feepayer's obligation to pay the parking fee. The feepayer shall be responsible for paying all parking fees in the manner set forth in Sections 4-115 and 4-116 below.

(c) No certificate of occupancy for any land use type specified in Subsection 16-263(a) of this Code shall be issued by the City until the parking fee has been paid. (Ord. 91-25 §4; Ord. 97-7 §1; Ord. 97-27 §2; Ord. 99-11 §3)

Sec. 4-115. Computation of the amount of parking fee.

(a) The amount of the parking fee shall be two thousand dollars ($2,000.00) for each required parking space. The number of required parking spaces shall be based upon the total floor area of the building or structure, the total number of dwelling units, the total number of rooms, suites and individual exits, the total number of guest rooms, the total number of students, instructors and personnel, the total num-

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ber of beds and doctors, or the total number of employees. In calculating the number of required parking spaces, reference shall be made to Subsection 16-263(a) of this Code. If the building or structure has two (2) or more uses having the same or different standards for determining the number of required parking spaces, the number of required parking spaces shall be the sum of all of the various uses.

(b) When any addition to or enlargement of an existing building or use, or a change in use, increases the building or the developed area of the use or the parking requirements of the building or structure, the parking fee shall be based upon the incremental increase in the floor area by use of the building or structure, the number of dwelling units, the number of rooms, suites and individual exits, the number of guest rooms, the number of students, instructors and personnel, the number of beds and doctors, or the number of employees, unless:

(1) The addition, enlargement or change in use increases:

a. The building or the developed area of the use by more than twenty percent (20%); or

b. The required parking by twenty percent (20%) or more.

If either condition a. or b. is met, then the feepayer shall pay the parking fee as calculated under Subsection (a) above. Otherwise, the feepayer shall be responsible for paying the parking fee for the total parking requirements of the building or structure.
(2) After the effective date of the adopting ordinance codified herein, if more than one (1) building permit has been issued and the cumulative effect of all the building permits increases:

a. The building or the developed area of the use by twenty percent (20%); or

b. The required parking by twenty percent (20%) or more.

If either condition a. or b. is met, then the feepayer shall pay the parking fee as calculated under Subsection (a) above. Otherwise, the feepayer shall be responsible for paying the parking fee for the total parking requirements of the building or structure. (Ord. 91-25 §5; Ord. 91-31 §1; Ord. 93-4 §1; Ord. 94-1 §1; Ord. 97-7 §1; Ord. 99-11 §4)

Sec. 4-116. Payment of fee.

(a) The feepayer shall pay the parking fee to the Finance Director prior to the issuance of a certificate of occupancy.

(b) All funds collected pursuant to this Article shall be properly identified by the City and promptly deposited into the appropriate Parking Fee Trust Fund to be held in separate accounts as established in Section 4-117 below and used solely for the purpose specified in this Article. (Ord. 91-25 §6; Ord. 94-1 §1; Ord. 97-7 §1)

Sec. 4-117. Parking Fee Benefit District and Parking Fee Trust Fund established.

(a) There is hereby established one (1) Parking Fee Benefit District (hereinafter the "District"). The District shall include the corporate boundaries of the City and any property subsequently annexed into the City.

(b) There is hereby established one (1) Parking Fee Trust Fund, to correspond to the previously established District. (Ord. 91-25 §7; Ord. 97-7 §1)

Sec. 4-118. Use of funds.

(a) The parking fees shall be for the benefit of the District. Parking fees shall be used for the purpose of expansion of and improvement to parking facilities, including land acquisition, capital improvements, planning and design, street construction, street improvements, ancillary buildings, architectural fees and costs, legal fees and costs, surveying, warming huts, site improvements, off-site improvements, buildings and equipment, communications equipment with an average useful life of at least three (3) years, plus any other associated accessory use or incidental use, but the parking fees shall not be used for the purpose of maintaining or operating the parking facility. Funds shall be expended in the order in which they are collected.

(b) The City may enter into intergovernmental agreements pursuant to the state statutes concerning the transmission of fees collected and the expenditure, accounting and use of the Parking Fee Trust Fund. The City may also enter into any other contract, private or otherwise, for the development, maintenance or operation of any parking facilities or services, including the operation of shuttle services, within the District.

(c) If the City is the supplier of services for the District, each fiscal period the City Manager shall present to the City Council a proposed capital improvement program for parking services, assigning funds, including any accrued interest, from the relevant Trust Fund to designated projects and related expenses. Funds, including any accrued interest, not assigned in any fiscal period shall be retained in the same Parking Fee Trust Fund until the next fiscal period except as provided by the refund provisions of this Article. (Ord. 91-25 §8; Ord. 97-7 §1; Ord. 2015-6, §6)
Sec. 4-119. Refund of parking fee.

All parking fees shall be expended in the order in which they are collected; therefore, parking fees that are received first will be expended or encumbered first. A feepayer shall be entitled to a refund if the parking fees were not expended or encumbered by the end of the calendar quarter immediately following ten (10) years from the date a feepayer paid all of the parking fee. If a feepayer made scheduled payment to the City under Section 4-116 above, then the time period begins from the date the City received the last payment. In order to receive a refund, a feepayer shall apply to the City in writing within one hundred eighty (180) days from the time the feepayer is entitled to a refund. If all or a portion of a feepayer's parking fee has not been expended or encumbered, the City shall refund that portion of the parking fee that was not expended or encumbered. (Ord. 91-25 §9; Ord. 92-35 §1; Ord. 97-7 §1)

Sec. 4-120. Nonapplication to residential uses.

This Article does not apply to residential districts or real property that is zoned for residential uses. Off-street parking for residential uses shall be provided on the same site as the residential use generating the need for the parking to the extent provided in Subsection 16-263(a) of this Code. (Ord. 91-25 §10; Ord. 91-31 §2; Ord. 93-4 §2; Ord. 94-1 §1; Ord. 97-7 §1; Ord. 99-11 §5)

Sec. 4-121. Collection procedures for fees/taxes.

For the purpose of ascertaining the correctness of a return or the amount of a fee or tax due to the City, the City may hold investigations and hearings concerning any matters covered by this Article, may examine any relevant books, papers, records or memoranda of any such person, may require the attendance of such person or any officer or employee of such person, or of any person having knowledge of such sales, and may take testimony and require proof for their information. (Ord. 94-1 §1; Ord. 97-7 §1)

Sec. 4-122. Late penalty and interest.

If a person fails to file a return or pay a tax or fee when due, there shall be added a penalty of ten percent (10%) to the total amount of the deficiency, but not less than ten dollars ($10.00), and the interest shall accrue at the rate of one percent (1%) each month on the total amount due on the deficiency until the tax or fee is paid. Payments of part but less than the total amount due shall be first applied to the penalty, then to the accrued interest, and lastly, to the tax or fee itself. (Ord. 94-1 §1; Ord. 97-7 §1)

Sec. 4-123. Cease and desist order.

If any business fails to pay any required tax or fee, the Mayor may issue an order to the business to cease and desist all further operations until the fee, tax, penalty and interest are paid in full. The order shall give the business three (3) days to secure a license and pay all amounts due the City; or to post a bond in the amount owing
the City and to request in writing a hearing with the City Clerk. If the business does nothing, it shall cease operations on the third day. These proceedings shall not relieve or discharge anyone from the civil liability for the payment of the fees, taxes, penalty and interest, nor from the prosecution of the offense. (Ord. 94-1 §1; Ord. 97-7 §1)

Sec. 4-124. Tax lien.

(a) The City may certify all delinquencies as taxes in accordance with Section 4-12 of this Chapter.

(b) The tax and fees imposed by this Chapter, along with all penalties and interest pertaining thereto, is a first and prior lien upon the goods, stock-in-trade and business fixtures in which the tax/feepayer has an ownership interest except for goods that have been purchased in the ordinary course of business by retail purchasers, and such lien takes priority over other liens or claims of whatsoever kind or nature on such property.

(c) The tax and fees imposed by this Chapter, along with all penalties and interest pertaining thereto, is a first and prior lien on the real and personal property of the tax/feepayer, and such lien takes priority.

(d) Whenever the business or property of any tax/feepayer is placed in receivership or bankruptcy, seized under restraint for nonpayment of property taxes or an assignment is made for the benefit of creditors, all fees, taxes, penalties and interest imposed by this Article and for which the tax/feepayer is in any way liable under this Chapter are a prior and preferred claim against all the property of the tax/feepayer. No sheriff, receiver, assignee or other officer shall sell the property of any tax/feepayer subject to the provisions of this Article under process or order of any court without first ascertaining from the Finance Director the amount of any fees, taxes, penalties or interest due and payable under this Article. If there are any such fees, taxes, penalties or interest due, owing or unpaid, it is the duty of such officer to first pay the amount of the fees, taxes, penalties or interest out of the proceeds of such sale before paying any moneys to judgment creditors or other claimants, except that the officer may pay costs of the proceedings and other pre-existing liens or claims taking lawful precedence over the City’s claims.

(e) If any tax, fee, penalty or interest imposed by this Article and shown due by returns filed by the tax/feepayer or by assessments made by the City as provided in this Article is not paid within five (5) days after it is due, the Finance Director may issue a notice, setting forth the name of the tax/feepayer, the amount of the tax, fee, penalties and interest, the date of its accrual and the fact that the City claims a first and prior lien therefor on the real and personal property of the tax/feepayer. The notice of lien shall be made on forms prescribed by the Finance Director and may be filed in the office of the clerk and recorder of any county in the state in which the tax/feepayer owns real or personal property or with any person in possession of any personal property or rights to property belonging to the tax/feepayer.

(f) The Finance Director shall release any lien as shown on the records of the county clerk and recorder as herein provided, upon payment of all fees, taxes, penalties and interest covered thereby, in the same manner as mortgages and judgments are released. (Ord. 94-1 §1; Ord. 97-7 §1)

Sec. 4-125. Civil penalty.

Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who is found guilty of or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as
set forth in Section 1-74 of this Code. For each day, or portion thereof, during which any violation continues, a person may be cited for a separate civil infraction. The penalties specified in this Section shall be cumulative, and nothing shall be construed as either prohibiting or limiting the City from pursuing such other remedies or penalties, including an action at law or equity. (Ord. 94-1 §1; Ord. 97-7 §1)

**Secs. 4-126—4-140. Reserved.**

**ARTICLE VII**

*Fire and Police Protection Fee*

**Sec. 4-141. Short title, authority and applicability.**

(a) This Article shall be known as and may be cited as the "Fire and Police Protection Fee Article."

(b) This Article shall apply to all portions of the City. (Ord. 91-11 §1; Ord. 94-1 §1; Ord. 97-4 §1)

**Sec. 4-142. Intent and purpose.**

(a) This Article is intended to be consistent with Chapter 16 of this Code.

(b) The purpose of this Article is to assure that new development bears a proportionate share of the cost of capital expenditures necessary to provide fire and police protection services in the City in the manner described in the fee analysis prepared by BBC Research & Consulting which is incorporated by this reference. (Ord. 91-11 §2; Ord. 97-4 §1)

**Sec. 4-143. Definitions.**

As used in this Article, the following words shall be construed to have the meanings defined below:

*Building permit* means an official document or certification which is issued by the Building Official and which authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repair of a building or structure. In the case of a change in use or occupancy of an existing building or structure, the term shall specifically include certificates of occupancy and occupancy permits, as those permits are defined or required by ordinance.

*A capital improvement* includes planning, land acquisition, site improvements, off-site improvements associated with new or expanded facilities, buildings and equipment, including communications equipment, with an average useful life of at least three (3) years, but excludes maintenance and operations in order to maintain the current level of service.

*City Manager* means the City Manager and/or any municipal officials that he or she may designate to administer the various provisions of this Article.

*Commercial* means any use approved by the City, except uses approved for residential, multifamily residential, industrial and/or light industrial use.

*A feepayer* is a person who applies to the City for the issuance of a building permit for a type of land development activity specified in Subsection 4-145(a) below.
Fire protection means the prevention and extinguishment of fires; the protection of life and property from fire; and the enforcement of municipal, county and state fire prevention codes.

Industrial means any use approved by the City for industrial or light industrial use.

A living unit is any temporary or permanent unit utilized for or designed or intended to be utilized for human habitation.

Multifamily residential includes, but is not limited to, attached houses, townhomes, apartments and condominiums.

Police protection means the protection of life and property from crime and harm; and the enforcement of municipal, county and state criminal codes.  (Ord. 91-11 §3; Ord. 97-4 §1)

Sec. 4-144. Imposition of fire and police protection fee.

(a) Any person who, after the effective date of the adopting ordinance codified herein, seeks to develop land by applying for the issuance of a building permit for one (1) of the land use types specified in Section 4-145 below shall be required to pay a fire and police protection fee in the manner and amount set forth in this Article.

(b) No building permit for any land use types specified in Section 4-145 shall be issued by the City unless and until the fee hereby required has been paid.  (Ord. 91-11 §4; Ord. 97-4 §1)

Sec. 4-145. Computation of the amount of fire and police protection fee.

(a) At the option of the feepayer, the amount of the fee shall be determined by multiplying the fee times the peak period occupant load for the land use type as defined in the International Building Code as adopted by the City:

<table>
<thead>
<tr>
<th>Land Use Type (Unit)</th>
<th>Fee/Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multifamily Residential</td>
<td>$70/occupant</td>
</tr>
<tr>
<td>Commercial</td>
<td>$14/occupant</td>
</tr>
<tr>
<td>Industrial</td>
<td>$70/occupant</td>
</tr>
</tbody>
</table>

(b) When change of use, redevelopment or modification of an existing use requires the issuance of a building permit, the fee shall be based upon the net increase in the fee for the new use as compared to the previous use, except when the new use represents an increase in total floor space of twenty percent (20%) or greater.  When such an increase occurs, the applicant shall be responsible for providing fire and police protection services for the entire structure (the new increment of development plus the previously existing structure).  (Ord. 91-11 §5; Ord. 94-1 §1; Ord. 97-4 §1)

Sec. 4-146. Payment of fee.

(a) The feepayer shall pay the fire and police protection fee to the Finance Director prior to the issuance of a building permit which may be required for development listed in the schedule in Subsection 4-145(a) above until such fee has been paid or until the relevant entity has accepted title to land area meeting the standards set out in Subsection (b) below.

(b) No fee is required for the issuance of any building permit for residential use which does not result in an additional living unit.

(c) All funds collected pursuant to this Article shall be properly identified by the City and promptly transferred for deposit into the appropriate Fire and Police Protection Fee Trust Fund, to be held in separate accounts as determined in Section 4-147 below and used solely for the purposes specified in this Article.  (Ord. 91-11 §6; Ord. 94-1 §1; Ord. 97-4 §1)
Sec. 4-147. Fire and Police Protection Fee Trust Funds established.

(a) There is hereby established one (1) Fire Protection Fee Trust Fund and one (1) Police Protection Fee Trust Fund. The City shall act as trustee for both of these Trusts. The Finance Director shall deposit fifty-nine percent (59%) of the fire and police protection fees collected pursuant to this Article into the Police Protection Fee Trust Fund. The Finance Director shall deposit forty-one percent (41%) of the fire and police protection fees collected pursuant to this Article into the Fire Protection Fee Trust Fund.

(b) No monies derived from the Fire and Police Protection Fee Trust Funds may be deposited in the General Fund or used for general government purposes, except to pay the equitable share of accounting management and the government of the fire and police protection fee. (Ord. 91-11 §7; Ord. 97-4 §1)

Sec. 4-148. Use of funds.

Funds collected from fire and police protection fees shall be used for the purpose of land acquisition and capital improvements to and expansion of fire and police protection services. Fee collections shall be used exclusively for capital improvements or expansion. Funds shall be expended in the order in which they are collected. (Ord. 91-11 §8; Ord. 97-4 §1)

Sec. 4-149. Refund of fee paid.

(a) If a building permit expires and no construction has been commenced, then the feepayer shall be entitled to a refund of the fire and police protection fee paid as a condition for its issuance, less the three percent (3%) of the fee retained as an administrative fee by the City. The feepayer shall be entitled to a refund equal to ninety-seven percent (97%) of the fee paid. No interest will be paid to the feepayer on refunds due to noncommencement.

(b) A feepayer shall be entitled to a refund if the fire and police protection fees are not expended or encumbered by the end of the calendar quarter immediately following six (6) years from the date a feepayer paid all of the fire and police protection fee. In order to receive a refund, a feepayer shall apply to the City within one hundred eighty (180) days of that date, and the City shall refund to the feepayer that portion of the fire and police protection fee that was not expended or encumbered, without interest. (Ord. 91-11 §9; Ord. 97-4 §1)

Sec. 4-150. Exemptions.

The following shall be exempted from payment of the fee:

(1) Alteration or expansion of an existing building or use of land where no additional living units are created, where the use is not changed, and where no additional demand for fire or police protection will be produced over and above that produced by the existing use.

(2) The construction of accessory residential buildings or structures which will not produce additional living units over and above those in the principal building or use of the land.

(3) The replacement of a building or structure that was in place on the effective date of the adopting ordinance codified herein, or the replacement of a building or structure that was constructed subsequent thereto and for which the correct fee had been paid or otherwise provided for, with a new building or structure of the same use. (Ord. 91-11 §10; Ord. 97-4 §1)
Sec. 4-151. Enforcement.

Failure to comply with any terms of this Article shall be a civil infraction. The enforcement procedures and penalties outlined in Sections 4-121 through 4-125 of this Chapter shall be applicable to this Article as if set forth herein. (Ord. 94-1 §1; Ord. 97-4 §1)

Secs. 4-152—4-170. Reserved.

ARTICLE VIII
Transportation Device Fee

Sec. 4-171. Authority and applicability.

(a) The City Council has the authority to adopt this Article pursuant to Article VI, Section 1(1)(a) of the Charter.

(b) This Article shall apply to all gaming devices within the City. (Ord. 96-39 §1)

Sec. 4-172. Intents and purposes.

(a) This Article is intended to be consistent with the City zoning ordinance.

(b) The purpose of this Article is to assure that casino development bears the cost of providing public transportation facilities, services and programs in the City primarily serving the gaming areas of the City.

(c) The purpose of this Article is as set forth in the recitals of the enabling ordinance. (Ord. 96-39 §1)

Sec. 4-173. Definitions.

The following words and phrases, when used in this Article, shall have the meanings respectively ascribed to them:

Board means the City Council or the governing body of the governmental entity that administers this Article.

City Manager means the City Manager of the City and/or any municipal official that he or she may designate to administer the various provisions of this Article.

Credit means the reduction in the amount of the transportation device fee a feepayer must pay for each gaming device per year.

A feepayer is a person who operates a gaming device in the City as described in Article IX of this Chapter.

Feepayer property means the outside boundary line of the real property upon which a gaming device is operated within the City.

Finance Director means the Finance Director of the City and/or any municipal official that he or she may designate to administer the various provisions of this Article.

Gaming device has the same meaning as gaming device in Article IX of this Chapter.

Shuttle stop means a stop designated by the City or the Black Hawk Transportation Authority for an organized service operated for or on behalf of the City or the Black Hawk Transportation Authority, with or without compensation, to transport people within the City. (Ord. 96-39 §1)

Sec. 4-174. Imposition of transportation device fees.

(a) Any person who, after the effective date of this Article, operates a gaming device in the City shall pay a transportation device fee.

(b) The feepayer shall be responsible for paying all transportation device fees in the amount set forth in Section 4-175 of this Article and in the manner set forth in Section 4-176 of this Article. (Ord. 96-39 §1)
Sec. 4-175. Computation of the amount of transportation device fee.

The amount of the transportation device fee shall be determined annually by the City Council and shall be collected monthly by the Finance Director to provide sufficient revenue to pay the actual cost of providing public transportation facilities, services and programs that primarily serve the gaming areas of the City. (Ord. 96-39 §1; Ord. 98-6 §1; Ord. 2015-38, §1)

Sec. 4-176. Payment of fee.

(a) The fee payer shall pay the transportation device fee to the Finance Director in twelve (12) monthly payments that are adjusted monthly to collect sufficient revenue to pay the actual cost of providing public transportation facilities, services and programs that primarily serve the gaming areas of the City and which are due on or before the twentieth day of each month with the first payment due on or before January 20 of each year and the last payment due on January 20 of the following year. The fee payer shall be subject to all of the procedures contained in Article IX of this Chapter concerning the payment and nonpayment of the device fee.

(b) Failure to make a scheduled transportation device fee payment on time shall be a civil infraction, and the enforcement procedures and penalties outlined in Sections 4-121 through 4-125 of this Chapter shall apply to this Article as if set forth herein. The unpaid portion of the transportation device fee shall be a debt owed to the City and shall accrue interest from the time the payment is due to the City until collected at the rate established by the State Commissioner of Banking pursuant to Section 39-21-110.5, C.R.S.

(c) All funds collected pursuant to this Article shall be properly identified by the City and promptly transferred by deposit into the Transportation Device Fee Trust Fund to be held in one (1) or more separate accounts as determined in Section 4-177 below and used solely for the purposes specified in this Article. (Ord. 96-39 §1; Ord. 98-6 §2; Ord. 2016-34 §1)

Sec. 4-177. Transportation Device Fee Trust Fund established.

(a) There is hereby established one (1) Transportation Device Fee Trust Fund. The City shall act as trustee of the Trust. All transportation device fees collected pursuant to this Article shall be deposited by the Finance Director in the Transportation Device Fee Trust Fund.

(b) No monies derived from the transportation device fee may be deposited in the General Fund or used for general government purposes, except to pay the equitable share of the cost of accounting, management and the government of the transportation device fee.

(c) Establishment of the Enterprise. The City hereby formally designates the Transportation Device Fee Trust Fund as the fund for the "City of Black Hawk, Colorado, Transportation Enterprise" (the "Enterprise"). It shall be the purpose of the Enterprise to pursue or continue all of the City's transportation activities as defined in Section 4-178 of this Black Hawk Municipal Code.

(1) Transactions in the name of the City. Any and all transactions of the Enterprise may be done in the name of the City or in the name of the Enterprise.

(2) The Enterprise shall be and is an agency of the City for the purposes and within the meaning of the following:

A. Title 24, Article 10, Part 1, Colorado Revised Statutes, the "Colorado Governmental Immunity Act";

B. Title 29, Article 1, Part 6, Colorado Revised Statutes, the "Colorado Local Government Audit Law";
C. Title 29, Article 1, Part 1, the "Local Government Budget Law of Colorado"; and

D. All other local, State, and Federal laws, rules, and regulations. (Ord. 96-39 §1; Ord. 2015-39, §1)

Sec. 4-178. Use of funds.

(a) The transportation device fees shall be for the purposes of planning and development of transportation resources, systems, programs and facilities (the "facilities"), provide public transportation, parking, streets and roadways, and all related services, facilities and programs for the benefit of the City. Transportation device fees may be used to plan, acquire and construct facilities and in any other manner to acquire, dispose of and trade or exchange (or arrange for any of the foregoing) facilities. In addition, transportation device fees may be used for any or all of the following purposes by any means, including the entry into and performance of agreements relating to the provision of transportation:

(1) To acquire, construct, manage, maintain or operate transportation systems, facilities, works or improvements, or to acquire a leasehold or any other interest therein, including without limitation buses, parking lots and structures, bus shelters, streets, roads, safety protection facilities, on-street parking facilities, gondolas, rail transportation facilities, stations, terminals, air transportation facilities, automobiles, trams, trolleys, bike paths, pedestrian facilities, transportation facilities, communication facilities, air pollution control facilities and, in connection with the foregoing, all appurtenances thereto.

(2) To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any legal or equitable interest in real or personal property utilized for public transportation.

(3) To apply for, acquire, sell, lease, dispose of or exchange facilities and licenses, certificates or permits for transportation purposes.

(4) To enter into, make and perform contracts of every kind with the United States, any state or political subdivision thereof, including the Regional Transportation District, the Black Hawk Business Improvement District, the City of Central City, any metropolitan district with transportation powers or any predecessor thereof, or any individual, firm, association, partnership, corporation, limited liability company or any other organization of any kind with the capacity to contract for transportation purposes.

(5) To employ agents and employees.

(6) To incur debts, liabilities or obligations to the extent and in the manner permitted by law and as provided herein, and to borrow money and, from time to time, to make, accept, endorse, execute, issue and deliver bonds, notes, certificates of participation in lease-purchase agreements, and other obligations for monies borrowed or in payment for property acquired, or for any other purpose, and as provided by law, and to the extent permitted by law, to secure the payment of any such obligations by mortgage, pledge, deed, indenture, agreement or other collateral instrument, or by other lien upon, assignment of or agreement in regard to, all or any part of the properties, rights, assets, contracts, easements, revenues and privileges.

(7) To buy, lease, construct, appropriate, contract for, invest in and otherwise acquire, and to own, hold, maintain, equip, operate, manage, improve, develop and deal in and with, and to sell, lease, exchange, transfer, convey and otherwise dispose of, and to mortgage, pledge, hypothecate and otherwise en-
cumber real and personal property of every kind, tangible and intangible, utilized for transportation purposes.

(8) To develop transportation planning and policy.

(9) To construct and maintain transportation works and establish and maintain facilities across or along any public street or highway.

(10) To provide for the rehabilitation of any surfaces adversely affected by the construction of facilities through the rehabilitation of plant cover, soil and rock stability, and other measures appropriate to the subsequent beneficial use of such lands.

(b) The City may enter into intergovernmental agreements pursuant to the state statutes and Constitution concerning the transmission of fees collected and the expenditure, accounting and use of the Transportation Device Fee Trust Fund. The City may also enter into any other contract, private or otherwise, for the development, maintenance or operation of any transportation facilities, services or programs, including the operation of shuttle services within or without the boundaries of the City and use the Transportation Device Fee Trust Fund to finance any obligation of the City under any such agreement or to purchase transportation facilities, services or programs from any other governmental or private entity.

(c) Each fiscal period, the City Manager shall present to the City Council for approval a proposed transportation program assigning funds, including any accrued interest, from the Transportation Device Fee Trust Fund to designated facilities, services, programs and related expenses. The City Manager may, from time to time, present proposed amendments to said transportation program for approval by the City Council. Funds, including any accrued interest, not assigned in any fiscal period shall be retained in the Transportation Device Fee Trust Fund until the next fiscal period except as provided by the refund provisions of this Article. (Ord. 96-39 §1; Ord. 98-6 §3)

Sec. 4-179. Refund of transportation device fee.

All transportation device fees shall be expended in the order in which they are collected; therefore, transportation device fees that are received first will be expended or encumbered first. A feepayer shall be entitled to a refund if the transportation device fees were not expended or encumbered by the end of the calendar quarter immediately following six (6) years from the date a feepayer paid all of the transportation device fee. In order to receive a refund, a feepayer shall apply to the City in writing within one hundred eighty (180) days from the time the feepayer is entitled to a refund. If all or a portion of a feepayer's transportation device fee has not been expended or encumbered, the City shall refund that portion of the transportation device fee that was not expended or encumbered. (Ord. 96-39 §1)

Sec. 4-180. Credit against fee.

(a) A feepayer may claim a credit against the transportation device fee only to the extent described in Subsections (b) and (c) below. Any feepayer claiming a credit as described herein shall submit documentation sufficient to permit the Finance Director to determine whether such credits claimed will be allowed and, if so, the amount of such credits. Credits must be claimed by the feepayer between January 1 and January 15 of each calendar year, for the calendar year in which the transportation device fee is to be paid to the City. Any credits not so claimed shall be deemed waived by the feepayer.

(b) A feepayer may receive a credit in an amount equal to fifty percent (50%) of the transportation device fee if the nearest boundary of the feepayer's property is more than two hundred (200) feet but less than one thousand
(1,000) feet from any shuttle stop established by
the City or the Black Hawk Transportation
Authority.

(c) A feepayer may receive a credit in the
amount of one hundred percent (100%) of the
transportation device fee if the nearest bound-
ary of the feepayer's property is more than one
thousand (1,000) feet from any shuttle stop
established by the City or the Black Hawk Trans-
portation Authority.

(d) A feepayer shall not receive any credit if
the nearest boundary of the feepayer's property
is located within two hundred (200) feet of any
shuttle stop established by the City or the Black
Hawk Transportation Authority. (Ord. 96-39
§1)

Sec. 4-181. Appeal.

Any decision made by the Finance Director
in the course of administering this Article may
be appealed to the City Manager for final deci-
sion consistent with this Article. (Ord. 96-39
§1)

Secs. 4-182—4-190. Reserved.

ARTICLE IX
Occupational Taxes

Sec. 4-191. Definitions.

Whenever in this Article the words hereinaf-
ter defined or construed in this Section are
used, they shall, unless the context requires
other uses, be deemed to have the following
meanings: engaged in business means to carry
on or take a part in the operation of the busi-
ness as owner, operator or agent. (Ord. 77-9
§2)

Sec. 4-192. Occupation taxes.

(a) All persons carrying on or engaging in
any business, profession or occupation within
the City limits shall pay an annual occupational
tax of fifty dollars ($50.00), unless otherwise
provided in Subsection (b) below.

(b) The following businesses, professions,
and occupations shall pay an annual occupa-
tional tax as follows:

(1) Operators of any equipment or me-
chanical, electromechanical or electronic con-
trivance, component or machine used re-
motely or directly in connection with gaming
or any game, including slot machines, video
gambling machines, poker tables, blackjack
tables or video blackjack tables (a video gam-
bling machine that consists of five (5) or less
stations which has one (1) mechanical dealer
and limits simultaneous play to the stations
that are permanently attached to the table in
the same manner as a "blackjack table"),
shall pay per machine or table: the sum of
seven hundred fifty dollars ($750.00).

(2) Operators of vending machines shall
pay per machine: the sum of ten dollars
($10.00).

(3) Owners, suppliers and/or lessors of
amusement machines or games of skill of
whatever nature shall pay per machine: the
sum of thirty dollars ($30.00).

(4) Route delivery to residential areas;
any and all delivery vehicles which sell and
deliver food, goods or services at retail prices
direct to residences in the City and which
represent businesses or firms located outside
the City, for each such vehicle: the sum of
fifteen dollars ($15.00).

(5) A direct selling agent shall be con-
strued to be any person who engages in or
conducts the business of going from house
to house, place to place, or in or along the
streets within the City, selling or offering for
sale at retail any goods, wares or merchan-
dise, service or anything of value in the pos-
session of the direct selling agent to persons
other than manufacturers, jobbers or retail-
ers in such commodities:

a. Per person, per quarter per year:
the sum of five dollars ($5.00).
b. Per person, per calendar year: the sum of fifteen dollars ($15.00).

If such agent is a member of a resident business, and so reported and included in such tax for that business, there shall be no charge for that agent engaging in direct selling on behalf of such resident business.

(6) Junk dealers and used parts dealers: the sum of one hundred fifty dollars ($150.00).

(7) Auctioneers: the sum of seventy-five dollars ($75.00).

(8) Hotels, motels, inns, bed and breakfasts, rooming houses or boarding houses:
   a. One (1) to twenty-five (25) rooms for rent, the sum of thirty dollars ($30.00);
   b. Twenty-six (26) to fifty (50) rooms for rent, the sum of fifty-five dollars ($55.00);
   c. Fifty-one (51) to one hundred (100) rooms for rent, the sum of seventy-five dollars ($75.00); and
   d. Over one hundred (100) rooms for rent, the sum of one hundred ten dollars ($110.00).

(9) Commercial rental units:
   a. Base tax, the sum of twenty-five dollars ($25.00); and
   b. Per unit, the sum of ten dollars ($10.00).

(10) Home occupation: the sum of fifteen dollars ($15.00).

(11) Motion picture theaters: the sum of one thousand five hundred dollars ($1,500.00).

(12) Adult book stores and pawnbrokers: the sum of five thousand dollars ($5,000.00).

(13) Massage parlors: the sum of five thousand dollars ($5,000.00).

(14) Asphalt production and production of commercial concrete products: the sum of two hundred fifty dollars ($250.00).

(15) Restaurants:
   a. Seating capacity of one (1) to ten (10) patrons, the sum of seventy-five dollars ($75.00);
   b. Seating capacity of eleven (11) to twenty-five (25) patrons, the sum of ninety dollars ($90.00);
   c. Seating capacity of twenty-six (26) to fifty (50) patrons, the sum of one hundred fifty dollars ($150.00);
   d. Seating capacity of fifty-one (51) to one hundred (100) patrons, the sum of two hundred twenty-five dollars ($225.00);
   e. Seating capacity of more than one hundred (100) patrons, the sum of three hundred dollars ($300.00); and
   f. Where patrons drive from the street onto the parking lot and "drive-in service" is provided by the restaurant, the sum of two hundred dollars ($200.00).

(16) Parking lots:
   a. One (1) to ten (10) motor vehicles, the sum of twenty dollars ($20.00);
   b. Eleven (11) to twenty-five (25) motor vehicles, the sum of forty dollars ($40.00);
c. Twenty-six (26) to forty (40) motor vehicles, the sum of sixty dollars ($60.00);

d. Forty-one (41) to sixty (60) motor vehicles, the sum of seventy-five dollars ($75.00);

e. Sixty-one (61) to ninety (90) motor vehicles, the sum of ninety dollars ($90.00); and

f. Over ninety (90) motor vehicles, the sum of one hundred fifteen dollars ($115.00).

(17) Race track: the sum of four hundred fifty dollars ($450.00).

(18) Golf course, includes private, public and municipally owned or operated golf courses: the sum of twenty-five dollars ($25.00).

(19) Country clubs: the sum of twenty-five dollars ($25.00).

(20) Kennels, groomers, pet shops and veterinary clinics: the sum of ninety dollars ($90.00).

(21) Banks, financial institutions and lenders: the sum of one hundred dollars ($100.00).

(22) Barbershops, spas and beauty salons: the sum of sixty-five dollars ($65.00).

(23) Dry cleaning: the sum of ninety dollars ($90.00).

(24) Travel agency: the sum of one hundred dollars ($100.00).

(25) Liquor license:

a. All operators who are licensed to sell beer, wine and spirituous liquors for consumption on the premises either as hotels or restaurants, the sum of five hundred dollars ($500.00).

b. All operators who are licensed to sell beer and wine only for consumption on the premises either as hotels or restaurants, the sum of four hundred dollars ($400.00).

c. All operators who are licensed to sell beer, wine and spirituous liquors for consumption on the premises either as taverns, gaming taverns or lodging and entertainment facilities, the sum of seven hundred dollars ($700.00).

d. All operators licensed to sell malt, vinous or spirituous liquors in original containers for consumption off the premises, as retail liquor stores or drugstores, the sum of three hundred fifty dollars ($350.00).

e. All operators licensed to sell only fermented malt beverages in original containers for consumption off the premises, the sum of three hundred fifty dollars ($350.00).

f. All operators licensed to sell only fermented malt beverages by the drink for consumption on the premises, the sum of one thousand dollars ($1,000.00).

Sec. 4-193. Taxable businesses.

(a) The tax herein provided shall not apply to the operation of any business which is exempt from federal or state taxation.

(b) The tax herein provided is upon the occupations and businesses in the performance of local functions. (Ord. 77-9 §3; Ord. 94-1 §1)
Sec. 4-194. Exemptions.

All occasional business transacted by churches of recognized religious faiths and all business transacted by nonprofit clubs and lodges shall be exempt from the tax imposed by this Article. (Ord. 77-9 §4)

Sec. 4-195. Time and place for payment of tax.

The occupational tax shall be due and payable to the City Clerk on January 1 of each calendar year. The tax, if not paid as provided, shall become delinquent on March 1 of the same year, unless provided otherwise by this Article. Anyone who begins operation of a business after the delinquency date shall pay the entire tax that is due and payable prior to the time that the person engages in the business, unless provided otherwise by this Article. (Ord. 77-9 §5; Ord. 91-16 §2; Ord. 93-2 §1; Ord. 94-1 §1)

Sec. 4-196. Nonexclusiveness of tax.

The payment of the tax imposed by this Article shall not relieve the person paying the same from the payment of any other tax, now or hereafter imposed by any ordinance for any business he or she may carry on unless so provided by the ordinance imposing the tax. It is the intent of this Article that the occupational taxes prescribed by the various Sections or Subsections of this Article applicable to any business shall be cumulative except where otherwise specifically provided. (Ord. 77-9 §6)

Sec. 4-197. Multiple tax.

Every person doing business in more than one (1) store, stand, parking lot, office or any other place of business shall pay a separate tax for each place of business, unless such places of business are contiguous to each other, open into each other and are operated as a unit. (Ord. 77-9 §7)

Sec. 4-198. Reporting requirements.

For purposes of the imposition of the gaming device tax, a gaming device shall be offered to the public as available for gaming in the same manner as reported by the operator of a gaming device to the Division of Gaming or its successor agency on a monthly basis. (Ord. 93-2 §2; Ord. 97-11 §1; Ord. 2002-30 §1; Ord. 2003-20 §1; Ord. 2016-34 §2)

Sec. 4-199. Imposition of gaming device tax.

(a) For purposes of the occupational tax imposed in Paragraph 4-192(b)(1) of this Article, the occupational tax shall become due and payable when a gaming device is available to the public for use.

(b) If a gaming device is offered to the public for use during a year, an operator shall immediately pay the occupational tax on the gaming device. (Ord. 93-2 §2; Ord. 95-7 §1; Ord. 2002-30 §2; Ord. 2016-34 §3)

Sec. 4-200. Return or sale of gaming device.

If any gaming device is sold or returned to the manufacturer during any month, the operator shall not pay the occupational tax in any subsequent month. Regardless of whether the operator makes monthly or weekly payments, the operator who sells or returns the gaming device will remain responsible for the occupational tax for the month in which it is sold or returned. If the gaming device is sold more than once in a month, the first owner in the month will remain responsible for the occupational tax for the month in which it is sold. (Ord. 93-2 §2; Ord. 95-7 §2; Ord. 2010-13 §3)

Sec. 4-201. Payment of gaming device tax.

(a) If a gaming device is offered to the public for use during any portion of the year, the operator is entitled to pro rata payment of the occupational tax. The occupational tax shall equal one-twelfth (1/12) of the occupational
tax for every month remaining in the year, including the month in which a gaming device is offered to the public for use.

(b) The operator of any gaming device shall be entitled to pay the occupational tax on a monthly basis. The monthly payment shall be payable at the City Clerk's office in a timely manner and according to the rules and regulations promulgated by the City Manager or the City Manager's designee. If the operator elects to make monthly payments, it shall still be responsible for the annual gaming device tax, unless provided otherwise by this Article. If the operator fails to pay any monthly occupational tax as required by this Article, then the operator shall pay the late penalty and interest set forth in Article IV of this Chapter with respect to the City sales tax. If, at the end of any quarter, the quarterly gaming device tax, late penalty and interest have not been paid, the entire remaining tax for the year is immediately due and payable, with the late penalty and interest continuing to accrue.

(c) For prorated gaming device taxes that are paid monthly, the amount shall be divided by the number of remaining months in the year. The number of remaining months shall include the unexpired month in which a gaming device is offered to the public for use. The first payment shall be payable when a gaming device is offered to the public for use. All subsequent payments shall be payable on the dates specified in this Section. If the operator fails to pay any monthly occupational tax as required by this Article, then the entire remaining tax is immediately due and payable.

(d) A replaced gaming device shall be defined as a gaming device that the operator has sold or returned to the manufacturer or to another operator within a current taxing month and, after the sale or return of the gaming device, the operator puts into service and offers to the public another gaming device within the same taxing month. An additional device tax shall not be required on a replaced gaming device within a taxing month, provided that the total number of gaming devices offered to the public for use as of the beginning of the current month remains the same and the removal of a gaming device was prior to the addition of the new gaming device. A replaced gaming device shall be reported by the operator to the City in the same manner that replacement is reported to the Colorado Division of Gaming or successor agency. (Ord. 91-16 §3; Ord. 93-2 §2; Ord. 95-7 §3; Ord. 97-11 §2; Ord. 2002-30 §3; Ord. 2010-13 §4; Ord. 2016-34 §4)

Sec. 4-202. Reserved.

Editor's note: Ord. 2016-34, § 5, adopted Dec. 14, 2016, deleted § 4-202, which pertained to financial hardship and derived from Ord. 95-7 §4; Ord. 2015-6 §8.

Sec. 4-203. Condition for credit of occupational tax.

(a) The operator of any gaming devices may be entitled to a credit of the occupational tax if it voluntarily closes its business for at least thirty (30) consecutive days and complies with the following conditions:

1. The operator's business is voluntarily closed.

2. The operator's business closes for at least thirty (30) consecutive days.

3. The operator's business has not received an occupational tax credit during the twelve (12) months preceding the closure of the business.

4. Prior to closing the operator's business, it is current on all taxes, licenses and water bills.
(6) Within one (1) week of the operator's business closing, it provides to the City written notice of the closure.

(7) Within one (1) week of the operator's business closing, it provides to the City a written inventory of all the operator's gaming devices.

(8) Within twenty-four (24) hours after moving any gaming device from the licensed premises, it provides written notice of the movement.

(9) During the closure of the operator's business, it remains current on all taxes, licenses and water bills.

(10) Prior to reopening the operator's business, it provides written notice to the City of the reopening.

(11) One (1) day before reopening the operator's business, it provides to the City a written inventory of all the operator's gaming devices.

(b) If the operator fails to comply with any one (1) of the above-stated requirements, then it will not be entitled to a credit. If the operator is not entitled to a credit, it will be responsible for paying the occupational tax as provided in this Article. (Ord. 93-2 §2)

Sec. 4-204. Amount of occupational tax credit.

(a) No credit shall be given for the days remaining in the month in which the operator's business is closed. Until the operator's business reopens, the occupational tax credit shall be equal to one-twelfth ($/12) of the occupational tax for every month in which the business remains closed. Moreover, the credit shall only apply to the gaming devices the business has at the time it closes. If the business acquires new gaming devices while it is closed, the credit shall not apply to the newly acquired gaming devices.

Upon reopening of the business, the operator of gaming devices will be required to pay the occupational tax as outlined in Section 4-198.

(b) If the operator has actually paid the occupational tax for a month in which it is entitled to a credit, the occupational tax actually paid will be applied to the occupational tax that is due upon reopening of the operator's business. However, in no event will the City refund the operator the occupational tax actually paid. (Ord. 93-2 §2)

Sec. 4-205. Collection; enforcement; interest and penalties.

(a) The administration of all provisions of this Article is hereby vested in and shall be exercised by the City Manager, or the City Manager's designee, who may prescribe forms and formulate and promulgate appropriate rules and regulations to effectuate the purpose of this Article.

(b) Failure to comply with any terms of this Article shall be a civil infraction. Penalties for failure to pay the City's occupational tax or for failure to make a return and remit the correct amount of tax required by this Article, and the procedures for enforcing such penalties, shall be the same as those prescribed in Article IV of this Chapter with respect to the City sales tax. (Ord. 2010-13 §5)

Sec. 4-206. Reserved.

Editor's note: Ord. 2016-34, § 6, adopted Dec. 14, 2016, deleted § 4-206, which pertained to gaming tax rebate and derived from Ord. 96-23 §1.

Sec. 4-207. Device tax increase authorized.

(a) In addition to the gaming device tax authorized by the other provisions of this Article IX of Chapter 4, the City Council hereby imposes, effective January 1, 2017, an increase in the device tax levied by the City in an amount of three hundred dollars ($300.00) per device.
(b) Said device tax increase, to the extent it is imposed, shall be used for any lawful purpose of the City including, but not limited to, funding capital improvement projects, economic development projects, debt service and core City services in an amount intended to offset the cost of the debt authorized by the registered electors of the City at the November 5, 2013 special election.

(c) Beginning January 1, 2017, a device tax rebate shall be provided to all operators of gaming devices when the number of devices reported in the previous month exceeds the budgeted revenue for each budgetary year as approved by City Council attributable to the device tax. The rebate would only occur in the months when the number of devices generates more than the adopted budget. (Ord. 2013-59 §1; Ord. 2013-60 §1; Ord. 2016-34 §7)

Sec. 4-208. Occupational tax on table games.

In addition to the gaming device tax authorized by the other provisions of Article IX of Chapter 4, the City Council hereby imposes, effective January 1, 2018, an increase in the device tax levied by the City as follows:

(a) The gaming device tax imposed on live table games shall be calculated at a rate of four (4) times the occupational tax otherwise levied upon gaming devices.

(b) For purposes of this Section 4-208, a live table game shall be defined as table games such as, without limitation, poker, black jack, craps, and roulette, when such games are conducted by live dealers. (Ord. 2017-26 §1)

Sec. 4-209. Reserved.

ARTICLE X

Commercial Improvements Tax

Sec. 4-210. Commercial improvements tax.

(a) A commercial improvements tax for the act or privilege of engaging in business activities within the City is hereby levied upon and shall be collected from every person who leases, owns, occupies or otherwise maintains a commercial improvement or structure within the City. The tax shall be measured by the number of square feet of floor space for each office or place of business leased, owned, occupied or otherwise maintained within the City during the reporting period.

(b) For the purpose of this Article, the definitions of terms shall be as set forth below or as defined in Section 39-26-102, C.R.S., and said definitions are incorporated herein by this reference:

Financial Officer means the City Manager or his or her designee.

Floor space means the total square footage of floor space for commercial improvements on a parcel of property as calculated by the Gilpin County Assessor's Office.

Reporting period means each quarter of the calendar year.

(c) The amount of tax due shall be equal to the number of square feet of floor space for each office or place of business leased, owned, occupied or otherwise maintained within a commercial zone within the City multiplied by the initial tax rate of thirty cents ($0.30) annually.

(d) The Financial Officer shall adjust the commercial improvements tax rate annually for inflation as follows: the tax rate increase or decrease for each year shall be equal to the tax rate for the previous year increased or decreased by the percentage change in the annual Denver-Boulder-Greeley consumer price index for all urban consumers (CPI-U) for the previous year.

(e) When a person rents space to another person, the person occupying the rental space shall be responsible for the commercial improvements tax on that rental space only if the renter has exclusive right of possession in the space as
against the landlord and the lease agreement explicitly states that the renter shall be responsible for paying the commercial improvements tax.
(f) Persons with more than one (1) office or place of business shall include all business floor space for all locations in making one (1) remittance of square-foot business tax to the City. (Ord. 2010-23 §1)

Sec. 4-211. Set-off for other City taxes paid.

Any person required to pay the commercial improvements tax who also pays sales tax imposed by Article IV of this Chapter, use tax imposed by Article V of this Chapter, occupational tax imposed by Article IX of this Chapter or lodging tax imposed by Article XIII of this Chapter shall be entitled to take a dollar-for-dollar set-off against his or her annual commercial improvements tax as follows:

(1) The annual commercial improvements tax shall be reduced by one dollar ($1.00) for every one dollar ($1.00) of local sales, use, occupational or lodging tax remitted to the City in a timely manner and according to the rules and regulations adopted or amended by the Financial Officer.

(2) Local sales, use, occupational or lodging tax that is not timely or properly remitted shall not qualify for set-off against the commercial improvements tax due.

(3) Set-off information, because it is based on remittance of local sales, use, occupational or lodging tax, whether furnished by the person paying the tax or obtained through audit, shall be treated as confidential by the City and its officers, employees and legal representatives.

b. Nothing in this Section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the contents thereof, nor to prohibit the inspection of any documents by the City Attorney or any other legal representatives of the City.

c. Notwithstanding the provisions of this Section, the Financial Officer may furnish to the taxing officials of the State or its political subdivisions, any other state or its subdivisions or the United States any information contained in any application, report, return or any other document if the recipient jurisdiction agrees with the Financial Officer to grant similar privileges to the City and if such information is to be used by the jurisdiction only for tax-related purposes. (Ord. 2010-23 §1)

Sec. 4-212. Reporting procedure.

Every person with a duty to remit the tax imposed by this Article shall report such taxes collected on forms prescribed by the Financial Officer and shall remit such taxes to the City annually according to the rules and regulations established by the Financial Officer. (Ord. 2010-23 §1)

Sec. 4-213. Maintenance and preservation of tax returns, reports and records.

(a) The Financial Officer may require any person to make such return, render such statement or keep and furnish such records as the Financial Officer may deem sufficient and reasonable to demonstrate whether such person is liable under this Article for payment or collection of the tax imposed hereby.

(b) Any person required to make a return or file a report under this Article shall preserve such records.
(c) The Financial Officer shall maintain all reports and returns of taxes required under this Article. (Ord. 2010-23 §1)

Sec. 4-214. Interest and penalties for failure to file tax return or pay tax.

Penalties for failure of a person to make a return and remit the correct amount of the commercial improvements tax required by this Article and the procedures for enforcing such penalties shall be the same as those prescribed in Article IV of this Chapter with respect to the City sales tax. (Ord. 2010-23 §1)

Sec. 4-215. Enforcement of tax liability.

The commercial improvements tax imposed by this Article is a first and prior lien on real property in which the person responsible to collect and remit the tax has an ownership interest, subject only to valid mortgages or other liens of record at the time of and prior to the recording of a notice of lien. (Ord. 2010-23 §1)

Sec. 4-216. Duties and powers of Financial Officer.

The Financial Officer is authorized to administer the provisions of this Article. The Financial Officer shall have and may exercise with respect to the commercial improvements tax imposed by this Article all powers and procedures as set forth in this Code, including but not limited to the authority to promulgate rules and regulations for the administration and enforcement of this Section and the authority to conduct dispute resolution, hearings and appeal procedures as set forth in this Code. (Ord. 2010-23 §1)

Sec. 4-217. Violations.

(a) It shall be a violation of this Article for any person subject to the provisions hereof to refuse to make any return required in this Article or to make any false or fraudulent return or any false statements in any return; or to fail or refuse to make payment to the Financial Officer of any commercial improvements tax due to the City; or in any manner to evade the collection and payment of the tax; or to otherwise violate or fail to comply with any other provision of this Article.

(b) It shall be unlawful for any person who leases, owns, occupies or otherwise maintains an office or place of business within a commercial zone district within the City to fail or refuse to pay the commercial improvements tax imposed by this Article; or to evade the payment or aid or abet another in any attempt to evade the payment of the commercial improvements tax imposed by this Article; or to make any false or fraudulent statement concerning such tax obligation or to otherwise violate or fail to comply with any other provision of this Article.

(c) Any person convicted of violating any of the provisions of this Article shall be subject to the general penalty provisions set forth in Section 1-74 of this Code unless otherwise expressly provided in this Article. (Ord. 2010-23 §1)

Secs. 4-218—4-250. Reserved.

ARTICLE XI

Telecommunications Business and Occupation Tax

Sec. 4-251. Definitions.

For purposes of this Article, the following words shall have the following meanings:

Line means a separate telephone number or telephone circuit identification number provided to a resident at retail.
Line count means the total number of lines for which US West (or its lawful successor) provides local telecommunications service to residents within the City as of October 1, 2000.

Local telecommunications service means basic local exchange service or basic service, as defined by Section 40-15-102, as amended, C.R.S., which is authorized by a certificate of public convenience and necessity or otherwise pursuant to Title 40, Part 15, as amended, C.R.S. For purposes of this Article, local telecommunications service shall not include wireless service.

Resident means any person, individual, corporation, partnership, joint venture, company, firm, association, proprietorship or other entity residing or having a place of business within the City.

Telecommunications company means any company providing local telecommunications service within the City. (Ord. 2000-11 §1)

Sec. 4-252. Levy of tax.

There is hereby levied on and against each telecommunications company within the City, a tax on the occupation and business of providing local telecommunications service at retail to residents of the City. The annual amount of tax shall be computed as follows:

(1) Each telecommunications company shall pay a tax of no more than nine hundred dollars ($900.00).

(2) The amount of tax shall be nine hundred dollars ($900.00) divided by the line count, and multiplying the result by the number of lines the telecommunications company provides within the City.

(3) The tax shall be calculated each October after the filing of the statement described in Section 4-254 below, and shall be effective on the following January 1.

(4) The tax shall be due and payable in twelve (12) equal monthly installments with the first such installment due on or before January 1 of each year, and each monthly installment thereafter payable on the first day of each and every month, except as otherwise provided in Paragraph (5).

(5) Each new telecommunications company that first becomes subject to this Article during any calendar year shall calculate its tax, for that calendar year, as stated in Paragraph (2). The tax shall be prorated based on the number of months service is provided during that year. Each new telecommunications company that becomes subject to this Article within the first ten (10) months of a tax year shall pay the prorated tax in installments starting with the month that it first provides service. Each new telecommunications company that becomes subject to this Article within the last (2) months of a tax year shall pay the total prorated tax within sixty (60) days of the date it first provides service. (Ord. 2000-11 §1)

Sec. 4-253. Effective date.

The tax levied by this Article shall commence on January 1, 2001, or on any date after January 1, 2001, on which the telecommunications company first provides local telecommunications service in the City. Until and including December 31, 2000, the flat rate business and occupation tax on telephone companies imposed by City of Black Hawk Ordinance No. 79-1 shall remain in full force and effect. (Ord. 2000-11 §1)
Sec. 4-254. Filing statements.

On October 1, 2000, each telecommunications company that will be subject to this Article on January 1, 2001, shall file with the City Clerk, in such form as the Clerk may require, a statement showing the total number of lines in the City on January 1, 2001. Thereafter, by October 1 of each year, each telecommunications company subject to this Article shall file a statement with the City Clerk showing its total number of lines in the City, to determine the tax for the following year. (Ord. 2000-11 §1)

Sec. 4-255. Failure to pay.

If any telecommunications company subject to the provisions of this Article fails to pay the tax as herein provided, the full amount of tax shall be due and collected from such company, with an additional penalty of ten percent (10%) of the amount of taxes due, which shall be a debt due and owing from such company to the City. (Ord. 2000-11 §1)

Sec. 4-256. Inspection of records.

The City, its officers, agents and representatives shall have the right, at all reasonable hours and times, to examine the books and records of any telecommunications company subject to the provisions of this Article, and to make copies of the contents thereof. (Ord. 2000-11 §1)

Sec. 4-257. Local purpose.

The tax set forth in this Article is imposed upon occupations and businesses in the performance of local functions, and it is not a tax upon those functions relating to interstate commerce. This Article is not intended to be a grant of franchise to any telecommunications company. (Ord. 2000-11 §1)

Sec. 4-258. Tax in lieu of other taxes.

The tax in this Article shall be in lieu of all other taxes on any telecommunications company subject to the provisions of this Article, other than ad valorem taxes. The tax in this Article shall be in addition to any otherwise applicable fees. (Ord. 2000-11 §1)

Sec. 4-259. Liabilities to continue.

All tax liabilities incurred before amendment of this Article, under prior versions of the tax, shall be and remain unconditionally due and payable, shall constitute a debt to the City and shall be treated as though all prior applicable ordinances and amendments thereto were in full force and effect. (Ord. 2000-11 §1)

Secs. 4-260—4-270. Reserved.

ARTICLE XII

Ambulance Fee

Sec. 4-271. Authority and applicability.

(a) The City of Black Hawk, as a home rule municipality organized under Article XX of the Colorado Constitution, has the authority under the Colorado Constitution, Zelinger v. Denver, 724 P.2d 1356 (Colo. 1986), Bloom v. City of Fort Collins, 784 P.2d 304 (Colo. 1989) and Barber v. Ritter, 196 P.3d 238 (Colo. 2008) to adopt this Article.

(b) This Article shall apply to all real property within the City which has gaming devices subject to the City's gaming device tax on its premises pursuant to Section 4-199 of this Chapter. (Ord. 2009-15 §1)

Sec. 4-272. Intent and purpose.

(a) The purpose of this Article is to promote the protection of the public health, safety and welfare regarding the provision of ambulance service within the City and to allow the City to collect such a fee from those that receive the bulk of the ambulance services within the City in order to provide the necessary service.
(b) It is the intent of the City Council in enacting this Article:

(1) To defray the cost of ambulance service provided within the City;

(2) To impose a fee that is reasonably related to the cost the City incurs in providing the ambulance service;

(3) To impose the cost of ambulance service upon casinos based on the number of devices because it is casino customers who account for the vast majority of ambulance calls within the City;

(4) To account for the revenue received from the ambulance fee separately from other funds; and

(5) To allocate the fee based on the number of gaming devices at a casino, because it is the best evidence available to the City regarding a correlation to the number of visitors served, which in turn the City finds and determines corresponds to the likelihood of needing ambulance service to respond to the casino. (Ord. 2009-15 §1)

Sec. 4-273. Definitions.

The following words used in this Article have the following meanings, unless the context clearly indicates otherwise:

*Ambulance fee* means the fee created in this Article for the funding of the ambulance service as provided herein.

*Ambulance service* means providing emergency medical services and the transportation of sick, disabled or injured persons by motor vehicle, aircraft or other form of transportation to and from facilities providing medical services, and specifically including employing the necessary staff and purchasing the necessary equipment to maintain all or a portion of three (3) ambulances, either directly or by contract, which provide ambulance service to the City. *Emergency medical services* means services engaged in providing initial emergency medical assistance, including but not limited to the treatment of trauma and burns and respiratory, circulatory and obstetrical emergencies.

*City* means the City of Black Hawk, Colorado.

*City Manager* means the City Manager of the City of Black Hawk or his or her designee (the "City Manager").

*District* means the Silver Dollar Metropolitan District, a special district organized pursuant to Title 32 of the Colorado Revised Statutes, which is authorized to provide ambulance service pursuant to its Amended Service Plan.

*Fee payer* means any real property within the City which has gaming devices subject to the City's gaming device tax on its premises pursuant to Section 4-199 of this Chapter, and which is required to pay the ambulance fee as required by this Article, either directly or through the District.

*Fund* means the Ambulance Service Fund that is created in this Article. (Ord. 2009-15 §1)

Sec. 4-274. Use of ambulance fee; establishment of Fund.

The Ambulance Service Fund is hereby established. The Fund shall hold all funds received by the City under this Article in a separate account and make expenditures thereof only for the purpose of ambulance service. (Ord. 2009-15 §1)
Sec. 4-275. Billing and payment of fees.

(a) The City shall cause billings for the ambulance fee to be rendered periodically at the rates established in this Section, or may contract with the Silver Dollar Metropolitan District for the collection of all or a portion of the fees as set forth in Subsection (c) below.

(b) Unless a contract executed by the City provides otherwise, the ambulance fee charged in each billing period and any notices shall be effective upon mailing said billing or notice to the address of the property or to the last known address of the property owner of the property being served by the ambulance service based on the records maintained by the City pursuant to the imposition of the City's device tax pursuant to Article IX of this Chapter.

(c) Unless a contract executed by the City provides otherwise, the fee payer shall pay the ambulance fee to the City Manager in twelve (12) monthly payments in an amount that is adjusted annually to collect sufficient revenue to pay the actual cost of providing ambulance service to primarily serve the gaming areas of the City as described in Subsection 4-271(b) of this Article. As of the date of the adoption of this Article, the fee payer shall pay the amount of two dollars and fifty cents ($2.50) per device per month.

(d) The City is hereby authorized to collect the ambulance fee, or any portion thereof, by a duly approved Intergovernmental Agreement with the Silver Dollar Metropolitan District. (Ord. 2009-15 §1)

Sec. 4-276. Delinquency and collection.

(a) The ambulance fee levied in accordance with this Article shall be paid upon receipt of the bill and in no case later than the last day of the month of receipt of the bill. If the bill is not paid within thirty-five (35) days after billing, and all appeals are exhausted under Section 4-277 below, it shall be deemed delinquent, whereupon a twenty-five-dollar surcharge shall be imposed for collection services.

(b) Nonpayment. All delinquent ambulance fees and any accrued surcharges shall be certified by the City Manager to the County Treasurer, pursuant to Section 31-20-105, C.R.S., and collected and paid over to the County Treasurer in the same manner as taxes. (Ord. 2009-15 §1)

Sec. 4-277. Administrative review; appeals.

Any fee payer desiring to dispute the amount of any ambulance fee may appeal the assessment of said ambulance fee to the City Manager by submitting a written notice of appeal, within thirty (30) days of the billing date. If a notice of appeal of the fee payment is received by the City within thirty (30) days of the billing date, then the City Manager shall schedule a hearing on said appeal to take place within forty-five (45) days of receipt of the notice of appeal. Notice of the time and place of the appeal hearing shall be mailed to the fee payer by certified mail, return receipt requested. The City Manager, as a result of evidence produced at said hearing, after considering the facts submitted by the fee payer, may deny the appeal or adjust the ambulance fee to be assessed to conform to the requirements of this Article. (Ord. 2009-15 §1)

Sec. 4-278. Review by City Council.

The City Council shall review the amount of the ambulance fee described in this Article at least annually. (Ord. 2009-15 §1)

Secs. 4-279—4-290. Reserved.
ARTICLE XIII

Lodging Tax

Sec. 4-291. General; legislative intent.

This Article shall be known and cited as the "City of Black Hawk Lodging Tax Code." The City intends that every person who, for consideration, leases or rents any hotel room, apartment hotel room, motel room, lodging house room, motor hotel room, guesthouse room, guest ranch room, bed and breakfast room, extended-stay lodging room or similar accommodation (collectively "lodging") located in the City shall pay, and every person who furnishes for lease or rental any such lodging shall collect, the tax imposed by this Article. (Ord. 2009-34 §1)

Sec. 4-292. Definitions.

For purposes of this Article, the following words shall have the following meanings:

Financial Officer means the City Manager or the City Manager's designee.

Lodging means hotel rooms, apartment hotel rooms, motel rooms, lodging house rooms, motor hotel rooms, guesthouse rooms, guest ranch rooms, bed and breakfast rooms, extended-stay lodging rooms or other similar accommodations that are rented to persons for a period of less than one (1) month or thirty (30) consecutive days, but shall not include rentals under a written agreement for occupancy for a period of at least one (1) month or thirty (30) days.

Sale means the furnishing for consideration by any person of lodging within the City.

Tax means the tax payable by the taxpayer or the aggregate amount of taxes to be collected and remitted to the City by the vendor during the period for which the vendor is required to collect and remit the tax upon lodging under this Article.

Taxpayer means a person obligated to pay the tax under the terms of this Article.

Vendor means a person furnishing lodging for consideration within the City. (Ord. 2009-34 §1)

Sec. 4-293. Tax levied.

On and after 12:00 a.m. January 1, 2010, there is levied and shall be paid and collected an excise tax of two percent (2%) on the lodging price paid for the leasing, rental or furnishing of any lodging accommodation located in the City. This tax shall be in addition to the sales and use tax as established pursuant to Article IV of this Chapter. It shall be a violation of this Code for any lodging customer of a hotel room, apartment hotel room, motel room, lodging house room, motor hotel room, guesthouse room, guest ranch room, bed and breakfast room, extended-stay lodging room or similar accommodation located in the City to fail to pay, or for any lodging provider of such accommodation to fail to collect, the tax levied pursuant to this Section. (Ord. 2009-34 §1)

Sec. 4-294. Liability for tax.

(a) No person leasing or renting lodging located in the City shall fail to pay, and no vendor leasing or renting such lodging shall fail to collect, the tax levied by this Article.

(b) The burden of proving that any transaction is not subject to the tax imposed by this Article is upon the person upon whom the duty to collect the tax is imposed. (Ord. 2009-34 §1)

Sec. 4-295. Advertisement of assumption or absorption of tax prohibited.

It shall be unlawful for any lodging vendor to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this Article will be assumed or absorbed by the lodging vendor.
or that it will not be added to the purchase price of lodging provided or, if added, that such tax or any part thereof will be refunded. (Ord. 2009-34 §1)

Sec. 4-296. Taxes collected are held in trust.

All sums of money paid by a person who leases or rents lodging upon which the lodging tax is imposed by this Article shall be and remain public money and the property of the City. The vendor required to collect and remit the lodging tax shall hold such money in trust for the sole use and benefit of the City until paying such money to the City. It shall be unlawful for any vendor to fail or refuse to pay the Financial Officer all such sums. (Ord. 2009-34 §1)

Sec. 4-297. Exempt transactions.

The following entities shall be exempt from the duty to pay tax under this Article but not the duty to collect and remit the tax levied hereby:

(1) The United States government, the State of Colorado, its departments and institutions, and the political subdivisions thereof, including the City, when acting in their governmental capacities and performing governmental functions and activities.

(2) All lodging accommodations provided to persons who the City is prohibited from taxing under the Constitution or laws of the United States or the State.

(3) All lodging accommodations provided to any person for a period of at least thirty (30) consecutive days.

(4) All lodging accommodations provided on a complimentary basis; provided, however, that the City Council is specifically authorized in its sole legislative discretion to amend this provision to allow for the payment of the tax levied hereon on the value of any room provided by the lodging provider to a lodging customer. (Ord. 2009-34 §1)

Sec. 4-298. Use of tax revenues.

The lodging tax shall be used by the City for promoting tourism, and tourism-related activities, including but not limited to conventions, including the funding of a visitor and convention bureau, visitor amenities, including an event and/or convention center, arena/fairgrounds or amphitheater, retail development, recreational amenities for visitors, such as golf courses, open space and trails and other activities, advertising and marketing, all determined to increase the number and duration of visits and make Black Hawk a destination resort. (Ord. 2009-34 §1)

Sec. 4-299. Reporting procedure.

Every person with a duty to collect the tax imposed by this Article shall report such taxes collected on forms prescribed by the Financial Officer and shall remit such taxes to the City on or before the twentieth day of the month for the preceding month or months under report. (Ord. 2009-34 §1)

Sec. 4-300. Maintenance and preservation of tax returns, reports and records.

(a) The Financial Officer may require any person to make such return, render such statement or keep and furnish such records as the Financial Officer may deem sufficient and reasonable to demonstrate whether such person is liable under this Article for payment or collection of the tax imposed hereby.

(b) Any person required to make a return or file a report under this Article shall preserve such records.

(c) The Financial Officer shall maintain all reports and returns of taxes required under this Article. (Ord. 2009-34 §1)
Sec. 4-301. Interest and penalties for failure to file tax return or pay tax.

Penalties for failure of a person to collect the lodging tax or to make a return and remit the correct amount of tax required by this Article, and the procedures for enforcing such penalties, shall be the same as those prescribed in Article IV of this Chapter with respect to the City sales tax. (Ord. 2009-34 §1)

Sec. 4-302. Enforcement of tax liability.

The lodging tax imposed by this Article is a first and prior lien on tangible personal property in which the vendor responsible to collect and remit the tax has an ownership interest, subject only to valid mortgages or other liens of record at the time of and prior to the recording of a notice of lien. (Ord. 2009-34 §1)

Sec. 4-303. Duties and powers of Financial Officer.

The Financial Officer or a designee thereof is authorized to administer the provisions of this Article. The Financial Officer shall have and may exercise with respect to the lodging tax imposed by this Article all powers and procedures as set forth in this Code, including but not limited to the administration and enforcement powers and procedures and the dispute resolution, hearings and appeal procedures set forth in this Code. (Ord. 2009-34 §1)

Sec. 4-304. Tax information confidential.

(a) All specific information gained under the provision of this Article which is used to determine the lodging tax to be paid and remitted to the City, whether furnished by a person paying the tax or a vendor, or obtained through audit, shall be treated by the City and its officers, employees and legal representatives as confidential.

(b) Except in accordance with judicial order or as otherwise provided by law, the Financial Officer shall not divulge or make known in any way any financial information obtained from any investigation conducted by the Financial Officer, or disclosed in any document, report or return filed under the provisions of this Article.

(c) The persons charged with the custody of such documents, reports, investigations and returns filed pursuant to this Article shall not be required to produce any of them or evidence of any matters contained therein in any action or proceeding in any court, except on behalf of the Financial Officer in any action or proceeding under the provisions of this Article to which the Financial Officer or the City is a party, or on behalf of any party to an action or proceeding under the provisions of this Article when the report of facts shown thereby is directly involved in such action or proceeding, or pursuant to any judicial order in which event the Court may require the production of and may admit in evidence so much of such returns or of the facts shown thereby as are pertinent to the action or proceeding and no more.

(d) No provision of this Section shall be construed to prohibit the delivery to a person or vendor or their duly authorized representative of a copy of any application, report, return or any other document kept, filed or maintained in connection with such person's or vendor's tax liability or other obligations under this Article. Copies of such documents may be certified by the Financial Officer and, when so certified, shall be evidence equal with the originals and may be received as evidence of their contents.

(e) Nothing in this Section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the contents thereof, nor to prohibit the inspection of any documents by the City Attorney or any other legal representatives of the City.
(f) Notwithstanding the provisions of this Section, the Financial Officer may furnish to the taxing officials of the State or its political subdivisions, and other state or its subdivisions or the United States any information contained in any application, report, return or any other document if the recipient jurisdiction agrees with the Financial Officer to grant similar privileges to the City and if such information is to be used by the jurisdiction only for tax-related purposes. (Ord. 2009-34 §1)

Sec. 4-305. Violations.

(a) It shall be a violation of this Article for any lodging vendor subject to the provisions hereof to refuse to make any return required in this Article or to make any false or fraudulent return or any false statements in any return; or to fail or refuse to make payment to the Financial Officer of any lodging taxes collected or due the City, or in any manner to evade the collection and payment of the tax, or to otherwise violate or fail to comply with any other provision of this Article.

(b) It shall be unlawful for any person leasing or renting lodging in the City to fail or refuse to pay the lodging tax imposed by this Article; or to evade the payment or aid or abet another in any attempt to evade the payment of the lodging tax imposed by this Article; or to make any false or fraudulent statement concerning such tax obligation or to otherwise violate or fail to comply with any other provision of this Article.

(c) Any person convicted of violating any of the provisions of this Article shall be subject to the general penalty provisions set forth in Section 1-74 of this Code, unless otherwise expressly provided in this Article. (Ord. 2009-34 §1)

Secs. 4-306—4-310. Reserved.

ARTICLE XIV

Enhanced Sales Tax Incentive Program

Sec. 4-311. Established.

There is hereby established within the City an Enhanced Sales Tax Incentive Program ("ESTIP"). (Ord. 2013-24 §1)

Sec. 4-312. General purpose of ESTIP.

The purpose of the ESTIP is to encourage the establishment and/or substantial expansion of retail sales tax generating businesses within the City, thereby stimulating the economy of and within the City, providing employment and opportunities for residents and guests of the City and others, further expanding the goods available for purchase and consumption by residents and guests of the City, and further increasing the sales tax collected by the City, which increased sales tax collections will enable the City to provide expanded and improved municipal services to and for the benefit of the residents and businesses of the City, while at the same time providing public or public-related improvements at no cost, or at deferred cost, to the City and its taxpayers and residents. (Ord. 2013-24 §1)

Sec. 4-313. Definitions.

As used in this Article, the following phrases shall have the following meanings:

*Enhanced sales tax* shall mean the amount of sales tax collected by the City over and above a base amount negotiated by, and agreed upon by, the applicant and the City, and which amount is approved by the Board of Aldermen, which base amount shall never be lower than the amount of sales tax collected by the City at the property in question in the previous twelve (12) months.

*Owner or proprietor* shall mean the record owner or operator of an individual business. (Ord. 2013-24 §1)

Sec. 4-314. Application requirements.

Participation in ESTIP shall be based upon approval by the City, exercising its legislative discretion in good faith. Any owner or proprietor of a newly established or proposed retail
sales tax generating business location, or the owner or proprietor of an existing retail sales tax generating business or location which wished to expand substantially, may apply to the City for inclusion within the ESTIP provided that the new or expanded business is reasonably likely to generate enhanced sales tax of at least twenty thousand dollars ($20,000.00) in the first year of operation. (Ord. 2013-24 §1)

Sec. 4-315. Approval of agreement; conditions; effect.

Approval by the City of an agreement implementing the ESTIP shall entitle the successful applicant to share in enhanced sales tax derived from the applicant’s property or business in an amount which shall not in any event exceed one hundred percent (100%) of the enhanced sales taxes; provided, however, that the applicant may use said amounts only for public or public-related purposes such as those specified herein and which are expressly approved by the City at the time of consideration of the application. The time period in which said enhanced sales taxes may be shared shall not commence until all public or public-related improvements are completed, and shall be limited by the City, in its discretion, to a specified time, or until a specified amount is reached. (Ord. 2013-24 §1)

Sec. 4-316. Permitted use of funds.

The uses to which said shared enhanced sales tax may be put by an applicant shall be strictly limited to those which are public or public-related in nature. For the purpose of this Article, public or public-related purposes shall mean public improvements, including but not limited to streets, sidewalks, curbs, gutters, pedestrian malls, street lights, drainage facilities, landscaping, statuaries, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, off-site sewer lines, lift stations, and all necessary incidental and appurtenant structures and improvements, together with the relocation and improvement of existing utility lines, and any other improvements of a similar nature which are specifically approved by the City upon the City’s findings that said improvement are public or public-related improvements, and that such improvements shall benefit the economic health of the City. (Ord. 2013-24 §1)

Sec. 4-317. Incremental payments.

The base figure for sales taxes shall be divided into twelve (12) monthly increments, which increments are subject to agreement between the parties, and approval by the City, and which increments shall be reasonably related to the average monthly performance of the business or property in question, or similar businesses in the area (i.e., adjust for seasonal variations). If in any month the agreed-upon figure is not met by the applicant for said month, no increment shall be shared until that deficit, and any other cumulative deficit, has been met, so that at the end of any twelve-month cycle, funds in excess of those “enhanced sales tax” funds agreed to be shared shall not have been shared with any applicant. (Ord. 2013-24 §1)

Sec. 4-318. Existing tax revenue sources unaffected.

It is an overriding consideration and determination of the City that existing sources of City sales tax revenues shall not be used, impaired or otherwise affected by this ESTIP. Therefore, it is hereby conclusively determined that only enhanced sales taxes generated by the property described in an application shall be subject to division under this ESTIP. It shall be the affirmative duty of the City Finance Director to collect and segregate all such enhanced sales taxes apart from the sales taxes generated by and collected from the City and to provide an accounting system which accomplishes the overriding purpose of this Section. It is conclusively stated by the City that this Article would not be adopted or implemented but for the provision of this Section. (Ord. 2013-24 §1)
Sec. 4-319. Criteria for approval.

Approval of an application for inclusion in this ESTIP shall be given by the City, at a public hearing held as a portion of a regularly scheduled City meeting, based upon the following criteria:

(1) The amount of enhanced sales tax which are reasonably to be anticipated to be derived by the City through the expanded or new retail sales tax generating business;

(2) The public benefits which are provided by the applicant through public works, public improvements, additional employment for City residents, etc.;

(3) The amount of expenditures which may be deferred by the City based upon public improvements to be completed by the applicant;

(4) The conformance of the applicant's property or project with the comprehensive plan and zoning ordinances of the City;

(5) The agreement required by Section 4-320 having been reached, which agreement shall contain and conform to all requirements of said Section 4-320. (Ord. 2013-24 §1)

Sec. 4-320. Agreement with City; required; contents.

Each applicant for approval submitted to the City shall be subject to approval by the City solely on its own merits. Approval of an application shall require that an agreement be executed by the owner and the City, which agreement shall, at a minimum, contain:

(1) A list of those public or public-related improvements which justify the applicant's approval, and the amount which shall be spent on said improvements;

(2) The maximum amount of enhanced sales taxes to be shared, and the maximum time during which said agreement shall continue, it being expressly understood that any such agreement shall expire and be of no further force and effect upon the occurrence of the earlier to be reached of the maximum time of the agreement (whether or not the maximum amount to be shared has been reached) or the maximum amount to be shared (whether or not the maximum time set forth has expired);

(3) A statement that this is a personal agreement which is not transferable and which does not run with the land;

(4) That this agreement shall never constitute a debt or obligation of the City within any constitutional or statutory provision;

(5) The base amount which is agreed upon by month, and the fact that if, in any month as specified, sales taxes received from the property do not at least equal said amount, that there shall be no sharing of funds for said month;

(6) The base amount shall be agreed upon which shall consider the historic level of sales at the property in question, or a similar property within the area in the event of a new business, and a reasonable allowance for increased sales due to the improvements and upgrades completed as a result of inclusion within this ESTIP;

(7) A provision that any enhanced sales taxes subject to sharing shall be escrowed in the event there is a legal challenge to this ESTIP or the approval of any application therefor;

(8) An affirmative statement that the obligations, benefits and/or provisions of this agreement may not be assigned in whole or in any part without the expressed authoriza-
tion of the City, and further that no third party shall be entitled to rely upon or enforce any provision hereof;

(9) That the agreement shall be subject to the annual appropriation of sufficient funds for payments as provided in this Article, pursuant to Section 20, Article X of the Colorado Constitution;

(10) That the agreement shall provide that the successful applicant shall have no right, claim, lien or priority in or to the City's sales tax revenue superior to or on parity with the rights, claims or liens of the holders as any sales tax revenue bonds, notes, certificates, or debentures payable from or secured by any sales taxes, existing or hereafter issued by the City; and that all rights of the successful applicant are, and at all times shall be, subordinate and inferior to the rights, claims, and liens of the holders of any and all such sales tax revenue bonds, notes, certificates, or debentures, payable from or secured by any sales taxes issued by the City; and

(11) Any other provisions agreed upon by the parties and approved by the City. (Ord. 2013-24 §1)

Sec. 4-321. Findings.

(a) The City has enacted this ESTIP for the purpose of:

(1) Providing the City with increased sales tax revenues generated upon and by properties as a result of this ESTIP; and

(2) Public improvements being completed by the private owners through no debt obligation being incurred on the part of the City.

(b) The City specifically finds and determines that creation of this ESTIP is consistent with the City's powers as a home rule municipal corporation, and that exercise of said powers in the manner set forth herein is in furtherance of the public health, safety and welfare. Notwithstanding any provision hereof, the City shall never be a joint venturer in any private entity or activity which participates in this ESTIP, and the City shall never be liable or responsible for any debt or obligation of any participant in ESTIP. (Ord. 2013-24 §1)

ARTICLE XV

Five Percent (5%) Special Marijuana Sales Tax

Sec. 4-331. Purpose.

It is the purpose of this Article to implement the five percent (5%) special marijuana sales tax previously approved by the registered electors of the City. (Ord. 2018-5 §1)

Sec. 4-332. Definitions.

The following terms used in this Article shall have the meanings set forth below:

(a) City Manager means and includes the City Manager of the City of Black Hawk, and any of the City Manager's designee.

(b) Director means the Director of Finance of the City of Black Hawk or such other person designated by the City in the enacting ordinance. Director shall also include such person's designee.

(c) Marijuana sales tax means and includes the revenues received from the five percent (5%) marijuana sales tax as set forth in this Article XV of Chapter 4.

(d) Retail marijuana means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concen-
Retail marijuana does not include industrial hemp, nor does it include fiber produced from the stalks, oil, cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

(e) Retail marijuana products means concentrated retail marijuana products and retail marijuana products that are comprised of retail marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

(f) Retail marijuana store means an entity licensed to purchase retail marijuana from a retail marijuana cultivation facility and to purchase retail marijuana products from a retail marijuana products manufacturing facility and to sell retail marijuana and retail marijuana products to consumers pursuant to Section 16 of Article XVIII of the Colorado Constitution and Article 43.4 of Title 12 of the Colorado Revised Statutes, and licensed by the City of Black Hawk to sell such products pursuant to Article XVIII of Chapter 6 of the Black Hawk Municipal Code.

Sec. 4-333. Five percent (5%) marijuana sales tax imposed.

There shall be a five percent (5%) marijuana sales tax imposed as more particularly described in this Article. Such marijuana sales tax shall be imposed in addition to the municipal sales tax on such sales, and shall be imposed on the following transactions:

(a) The sale of medical marijuana, medical marijuana products, and medical marijuana infused products by any medical marijuana center if ever licensed by the City; and

(b) The sale of retail marijuana, and retail marijuana products by any retail marijuana store licensed by the City.

Sec. 4-334. Use of marijuana sales tax.

The revenue received from the five percent (5%) marijuana sales tax shall be separately accounted for in a manner determined necessary by the City in order to implement and administer the provisions of this Article.

Sec. 4-335. Use of revenues from the five percent (5%) marijuana sales tax.

(a) Expenditures of the revenues received from the marijuana sales tax shall be used for the purpose of promoting the general purposes of the City of Black Hawk.

(b) The City may pledge revenues received from the marijuana sales tax and those anticipated to be collected to the retirement of the principal and interest of bonds issued by the City as the City Council determines appropriate.


To the extent required to implement and enforce the provisions of this Article XV of Chapter 4 of this Article and the provisions of Article XVIII of Chapter 6 of the Black Hawk Municipal Code and the applicable provisions of this Chapter 4 are hereby incorporated herein. The powers and duties of the Director in implementing and enforcing the provisions of this Article XV of Chapter 4 shall specifically be those set forth in Article IV of this Chapter 4 of the Black Hawk Municipal Code.
CHAPTER 5
Franchises and Communication Systems

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ARTICLE I

Cable Television Franchise*

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ARTICLE II

Gas and Electric Franchise†

DIVISION 1

Definitions

Sec. 5-41. Definitions.

For the purpose of this franchise agreement ("franchise"), the following words and phrases shall have the meaning given in this Article. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and "may" is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

City means the City of Black Hawk, a Colorado home rule municipality.

City streets means the surface, the air space above the surface and the area below the surface of any City-dedicated or City-maintained streets, alleys, bridges, roads, lanes, access easements, and other public rights-of-way within the City, which are primarily used for vehicle and pedestrian traffic, but not including pedestrian trails that are not attached to City streets. "Streets" shall not include public utility easements and other City property.

Clean energy means energy produced from renewable energy resources, eligible energy sources, and by means of advanced technologies that cost-effectively capture and sequester carbon emissions produced as a byproduct of power generation. For purposes of this definition, "cost" means all those costs as determined by the PUC.

Company means Public Service Company of Colorado, a Colorado corporation, and an Xcel Energy company and its successors and assigns including affiliates or subsidiaries that undertake to perform any of the obligations under this franchise.

Company facilities means all facilities of the Company reasonably necessary or desirable to provide gas and electric service into, within and through the City, including without limitation, plants, works, systems, substations, transmission and distribution structures and systems, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, street lights, wire, pull boxes, handholes, cables and poles as well as all associated appurtenances.

Council or City Council means the legislative body of the City.

Electric gross revenues means those amounts of money that the Company receives from the sale or delivery of electricity in the City, after adjusting for refunds, net write-offs of accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to Federal or State regulation. "Electric gross revenues" shall exclude any revenue for the sale or delivery of electricity to the City as a customer of the Company.

*Editor's note: A copy of the Cable Television Franchise Agreement is on file in the office of the City Clerk.

†Editor's note: Ord. 2017-2 §1(Exh. A, Arts. 1—21), adopted Feb. 8, 2017, amended Art. II in its entirety to read as herein set out. The former Art. II, §§ 5-41—5-95, pertained to similar subject matter and derived from Ord. 91-23; Ord. 94-1 §1; and Ord. 2016-29 § 1.
Energy conservation means the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.

Energy efficiency means the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.

Force majeure means the inability to undertake an obligation of this franchise due to a cause that could not be reasonably anticipated by a party or is beyond its reasonable control after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, terrorist acts, acts of governmental authority, acts of God, floods, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in the delivery of materials. Neither the City nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to a force majeure condition.

Gross revenues means those amounts of money that the Company receives from the sale of gas and electricity within the City under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the City, as adjusted for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include without limitation credits, surcharges, refunds, and pro-forma adjustments pursuant to Federal or State regulation. "Gross revenues" shall exclude any revenues from the sale of gas or electricity to the City or the transportation of gas to the City.

Industry standards means standards developed by government agencies and generally recognized organizations that engage in the business of developing utility industry standards for materials, specifications, testing, construction, repair, maintenance, manufacturing, and other facets of the electric and gas utility industries. Such agencies and organizations include, but are not limited to...
the U.S. Department of Transportation, the Federal Energy Regulatory Commission (FERC), the Colorado Public Utilities Commission, the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), the Pipeline Research Council International, Inc. (PRCI), the American Society of Mechanical Engineers (ASME), the Institute of Electrical and Electronic Engineers (IEEE), the Electric Power Research Institute (EPRI), the Gas Technology Institute (GTI), the National Fire Protection Association (NFPA), and specifically includes the National Electric Safety Code (NESC).

Other City property means the surface, the air space above the surface and the area below the surface of any property owned by the City or directly controlled by the City due to the City's real property interest in the same or hereafter owned by the City, that would not otherwise fall under the definition of "streets," but which provides a suitable location for the placement of Company facilities as specifically approved in writing by the City. "Other City property" does not include public utility easements.

Private project means any project which is not covered by the definition of "public project".

Public project means: (1) any public work or improvement within the City that is wholly owned by the City; or (2) any public work or improvement within the City where fifty percent (50%) or more of the funding is provided by any combination of the City, the Federal government, the State of Colorado, or any Colorado county, but excluding all entities established under Title 32 of the Colorado Revised Statutes, excepting only the Black Hawk Central City Sanitation District.

Public Utilities Commission or PUC means the Public Utilities Commission of the State of Colorado or other State agency succeeding to the regulatory powers of the Public Utilities Commission.

Public utility easement means any platted easement over, under, or above public or private property, expressly dedicated for the use of public utility providers for the placement of utility facilities, including without limitation Company facilities.

Renewable energy resources means wind, solar, and geothermal resources; energy produced from biomass from nontoxic plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill residue, slash, or brush, or from animal wastes and products of animal wastes, or from methane produced at landfills or as a by-product of the treatment of wastewater residuals; new hydroelectricity with a nameplate rating of ten (10) megawatts or less; and hydroelectricity in existence on January 1, 2005, with a nameplate rating of thirty (30) megawatts or less; fuel cells using hydrogen derived from a renewable energy resource; and recycled energy produced by a generation unit with a nameplate capacity of not more than fifteen (15) megawatts that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel, and includes any eligible renewable energy resource as defined in Section 40-2-124(1)(a), C.R.S., as the same may be amended from time to time.

Residents means all persons, businesses, industries, governmental agencies, including the City, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the City.

Supporting documentation means all information reasonably required or needed in order to allow the Company to design and construct any work performed under the
provisions of this franchise, including without limitation construction plans, a description of known environmental issues, the identification of critical right-of-way or easement issues, the final recorded plat for the property, the date the site will be ready for the Company to begin construction, the date gas service and meter set are needed, and the name and contact information for the City's project manager.

**Tariffs** means those tariffs of the Company on file and in effect with the PUC or other governing jurisdiction, as may be amended from time to time.

**Utility service** means the sale of gas or electricity to residents by the Company under rates and tariffs approved by the PUC, as well as the delivery of gas to residents by the Company. (Ord. 2017-2 §1(Exh. A))

**DIVISION 2**

**Grant of Franchise**

**Sec. 5-42. Grant of franchise.**

(a) Grant. The City hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this franchise, the non-exclusive right to make reasonable use of City streets, public utility easements (as applicable) and other City property:

(1) To provide utility service to the City and to its residents under the tariffs; and

(2) To acquire, purchase, construct, install, locate, maintain, operate, upgrade and extend into, within and through the City all Company facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transportation, transmission and distribution of utility service within and through the City.

(b) Street lighting and traffic signal lighting service. Street lighting service and traffic signal lighting service within the City shall be governed by tariffs on file with the PUC. (Ord. 2017-2 §1(Exh. A))

**Sec. 5-43. Conditions and limitations.**

(a) Scope of franchise. The grant of this franchise shall extend to all areas of the City as it is now or hereafter constituted that are within the Company's PUC-certificated service territory; however, nothing contained in this franchise shall be construed to authorize the Company to engage in activities other than the provision of utility service.

(b) Subject to City usage. The right to make reasonable use of City streets, public utility easements as applicable and other City property to provide utility service to the City and its residents under this franchise is subject to and subordinate to any City usage of City streets, and other City property.

(c) Prior grants not revoked. This franchise is not intended to revoke any prior license, grant, or right to use City streets, other City property or public utility easements and such licenses, grants or rights of use are hereby affirmed.

(d) Franchise not exclusive. The rights granted by this franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the City reserves the right to make or grant a franchise to any other person, firm, or corporation. (Ord. 2017-2 §1(Exh. A))

**Sec. 5-44. Effective date and term.**

This franchise shall take effect on January 6, 2017, and shall supersede any prior franchise grants to the Company by the City. This franchise shall terminate on January 5, 2037, unless extended by mutual consent. (Ord. 2017-2 §1(Exh. A))
DIVISION 3

City Police Powers

Sec. 5-45. Police powers.

The Company expressly acknowledges the City's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the City considers making any substantive changes in its local codes or regulations that in the City's reasonable opinion will significantly impact the Company's operations in City streets, public utility easements and other City property, the City will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's non-compliance with any applicable local requirements. (Ord. 2017-2 §1(Exh. A))

Sec. 5-46. Regulation of City streets or other City property.

The Company expressly acknowledges the City's right to enforce regulations concerning the Company's access to or use of City streets, and other City property, including requirements for permits. (Ord. 2017-2 §1(Exh. A))

Sec. 5-47. Compliance with laws.

The Company shall promptly and fully comply with all laws, regulations, permits and orders lawfully enacted by the City that are consistent with industry standards. Nothing herein provided shall prevent the Company from legally challenging or appealing the enactment of any laws, regulations, permits and orders enacted by the City. (Ord. 2017-2 §1(Exh. A))

DIVISION 4

Franchise Fee

Sec. 5-48. Franchise fee.

(a) Fee. In partial consideration for this franchise, which provides the certain terms related to the Company's use of City streets, public utility easements and other City property, which are valuable public properties acquired and maintained by the City, and in recognition of the fact that the grant to the Company of this franchise is a valuable right, the Company shall pay the City a sum equal to three percent (3%) of all gross revenues. To the extent permitted by law, the Company shall collect this fee (the "franchise fee") from a surcharge upon City residents who are customers of the Company.

(b) Obligation in lieu of fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the City, at the same times and in the same manner as provided in this franchise, an aggregate amount equal to the amount that the Company would have paid as the franchise fee as partial consideration for use of City streets, public utility easements and other City property. Such payments shall be made in accordance with applicable provisions of law. Further, to the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon utility service provided to City residents who are customers of the Company.

(c) Changes in utility service industries. The City and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this franchise, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the City, the Company will cooperate with and assist the City in making reasonable modifications of this franchise in an effort to provide that the City receives an amount in franchise fees or some other form of compensation that is
the same amount of franchise fees paid to the City as of the date that such initiatives and changes adversely impact franchise fee revenues.

(d) Utility service provided to the City. No franchise fee shall be charged to the City for utility service provided directly or indirectly to the City for its own consumption, including street lighting service and traffic signal lighting service. (Ord. 2017-2 §1(Exh. A))

Sec. 5-49. Remittance of franchise fee.

(a) Remittance schedule. Franchise fee revenues shall be remitted by the Company to the City as directed by the City in monthly installments not more than thirty (30) days following the close of each month.

(b) Correction of franchise fee payments. In the event that either the City or the Company discovers that there has been an error in the calculation of a franchise fee payment to the City, either party shall provide written notice of the error to the other party. If the party receiving written notice of the error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 5-49(d) of this franchise; otherwise, the error shall be corrected in the next monthly payment. However subject to the terms of the applicable tariffs, if the error results in an overpayment of the franchise fee to the City, and said overpayment is in excess of five thousand dollars ($5,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered; provided that if such period would extend beyond the term of this franchise, the Company may elect to require the City to provide it with a refund instead of a credit, with such refund to be spread over the same period the error was undiscovered, even if the refund will be paid after the termination date of this franchise. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. Subject to the terms of the applicable tariffs, in no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than five (5) years prior to the discovery of the error.

(c) Audit of franchise fees.

(1) Company audit. At the request of the City, every three (3) years commencing at the end of the third calendar year of the term of this franchise, the Company shall conduct an internal audit, in accordance with the Company's auditing principles and policies that are applicable to electric and gas utilities that are developed in accordance with the Institute of Internal Auditors, to investigate and determine the correctness of the franchise fees paid to the City. Such audit shall be limited to the previous three (3) calendar years. Within a reasonable period of time after the audit, the Company shall provide a written report to the City Clerk summarizing the testing procedures followed along with any potential findings.

(2) City audit. If the City disagrees with the results of the Company's audit, and if the parties are not able to informally resolve their differences, the City may conduct its own audit at its own expense, in accordance with generally accepted auditing principles applicable to electric and gas utilities, and the Company shall cooperate by providing the City's auditor with non-confidential information that would be required to be disclosed under applicable State sales and use tax laws.

(3) Underpayments. If the results of a City audit conducted pursuant to Subsection (c)(2) concludes that the Company has underpaid the City by five percent (5%) or more, in addition to the obligation to pay
such amounts to the City, the Company shall also pay all reasonable costs of the City’s audit. The Company shall not be responsible for any errors in third party data that is used in association with audits, including without limitation, Geotax data.

(d) Fee disputes. Either party may challenge any written notification of error as provided for in Section 5-49(b) of this franchise by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party’s notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

(e) Reports. To the extent allowed by law, upon written request by the City, but not more than once per year, the Company shall supply the City with the names and addresses of registered gas suppliers and brokers of natural gas that utilize Company facilities to sell or distribute natural gas in Colorado. The Company shall not be required to disclose any confidential or proprietary information. (Ord. 2017-2 §1(Exh. A))

Sec. 5-50. Franchise fee payment not in lieu of permit or other fees.

Payment of the franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the City, except that the franchise fee shall be in lieu of any occupation, occupancy or similar tax or fee for the use of City streets, public utility easements and other City property under the terms set forth in this franchise. (Ord. 2017-2 §1(Exh. A))

DIVISION 5
Administration of Franchise

Sec. 5-51. City designee.

The City shall designate in writing to the Company an official having full power and authority to administer this franchise. The City may also designate one (1) or more City representatives to act as the primary liaison with the Company as to particular matters addressed by this franchise and shall provide the Company with the names and telephone numbers of said City representatives. The City may change these designations by providing written notice to the Company. The City’s designee shall have the right, at all reasonable times, to inspect any Company facilities in City streets and other City property. (Ord. 2017-2 §1(Exh. A))

Sec. 5-52. Company designee.

The Company shall designate a representative to act as the primary liaison with the City and shall provide the City with the name, address, and telephone number for the Company’s representative under this franchise. The Company may change its designation by providing written notice to the City. The City shall use this liaison to communicate with the Company regarding this franchise. (Ord. 2017-2 §1(Exh. A))

Sec. 5-53. Coordination of work.

The Company shall coordinate its activities in City streets, public utility easements and other City property with the City. The City and the Company will meet annually upon the written request of the City to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect City streets, and other City property, including without limitation any planned City streets paving projects. The City and Company shall hold such meetings as either deems necessary to exchange additional information with a view toward coordinating their respective activities in those areas where such coordination may prove beneficial and so that the City will be assured that all applicable provisions of this franchise, applicable building and zoning codes, and applicable City air and water pollution regulations are complied with, and that aesthetic and other relevant planning
principles have been given due consideration. (Ord. 2017-2 §1(Exh. A))

DIVISION 6
Supply, Construction, and Design

Sec. 5-54. Purpose.
The Company acknowledges the critical nature of the municipal services performed or provided by the City to the residents that require the Company to provide prompt and reliable utility service and the performance of related services for City facilities. The parties wish to provide for certain terms and conditions under which the Company will provide utility service and perform related services for the City to facilitate and enhance the operation of City facilities. The parties also wish to provide for other processes and procedures related to the provision of utility service to the City. (Ord. 2017-2 §1(Exh. A))

Sec. 5-55. Supply.
Subject to the jurisdiction of the PUC, the Company shall take all reasonable and necessary steps to provide a sufficient supply of gas and electricity to residents at the lowest reasonable cost consistent with reliable supplies. (Ord. 2017-2 §1(Exh. A))

Sec. 5-56. Charges to the City for service to City facilities.
No charges to the City by the Company for utility service (other than gas transportation which shall be subject to negotiated contracts) shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The parties acknowledge the jurisdiction of the PUC over the Company's regulated intrastate electric and gas rates. All charges to the City shall be in accord with the tariffs. (Ord. 2017-2 §1(Exh. A))

Sec. 5-57. Restoration of service.
(a) Notification. The Company shall provide to the City daytime and nighttime telephone numbers of a designated Company representative from whom the City may obtain status information from the Company on a twenty-four (24) hour basis concerning interruptions of utility service in any part of the City and the status of the Company's responses to the same.

(b) Restoration. In the event the Company's gas system or electric system within the City, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such system to satisfactory service within the shortest practicable time, or provide a reasonable alternative to such system if the Company elects not to restore such system. (Ord. 2017-2 §1(Exh. A))

Sec. 5-58. Obligations regarding Company facilities.
(a) Company facilities. All Company facilities within City streets, and other City property shall be maintained in good repair and condition.

(b) Company work within the City. All work within City streets and other City property performed or caused to be performed by the Company shall be done:

(1) In a high-quality manner that is in accordance with industry standards;

(2) In a timely and expeditious manner;

(3) In a manner that reasonably minimizes inconvenience to the public;

(4) In a cost-effective manner, which may include the use of qualified contractors; and
(5) In accordance with all applicable laws, ordinances, regulations and permits that are consistent with industry standards and the tariffs.

(c) No interference with City facilities. Company facilities shall not unreasonably interfere with any City facilities, including water facilities, sanitary or storm sewer facilities, communications facilities, or other City uses of City streets, public utility easements or other City property. Company facilities shall be installed and maintained in City streets, and other City property so as to reasonably minimize interference with other property, trees, and other improvements and natural features in and adjoining City streets, and other City property in light of the Company's obligation under Colorado law to provide safe and reliable utility facilities and services. Company facilities shall not be installed on any other City property absent the express written consent of the City.

(d) Permit and inspection. The installation, renovation, and replacement of any Company facilities in City streets, or other City property by or on behalf of the Company shall be subject to permitting, inspection and approval by the City in accordance with applicable laws. Such permitting, inspection and approval may include without limitation the following matters: location of Company facilities, cutting and pruning of trees and shrubs, and disturbance of pavement, sidewalks and surfaces of City streets, or other City property; provided, however, the Company shall have the right to cut, prune, and/or remove vegetation in accordance with its standard vegetation management requirements and procedures. The Company agrees to cooperate with the City in conducting inspections and shall promptly perform any remedial action lawfully required by the City pursuant to any such inspection that is consistent with industry standards.

(e) Compliance. Subject to the provisions of Section 5-47, the Company and all of its contractors shall comply with the requirements of all applicable municipal laws, ordinances, regulations, permits, and standards lawfully adopted that are consistent with industry standards, including without limitation requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. The Company shall require that its contractors working in City streets, and other City property hold the necessary licenses and permits required by law.

(f) Increase in voltage. The Company shall reimburse the City for the cost of upgrading the electrical system or facility of any City building or facility that uses utility service where such upgrading is solely caused or occasioned by the Company's decision to increase the voltage of delivered electrical energy. This provision shall not apply to voltage increases required by law, including without limitation, a final order of the PUC, or voltage increases requested by the City.

(g) As-built drawings. Within thirty (30) days after written request of the City designee, but no sooner than fourteen (14) days after project completion, the Company shall commence its internal process to permit the Company to provide, on a project by project basis, as-built drawings of any Company facility installed within the City streets or contiguous to the City streets. If the requested information must be limited or cannot be provided pursuant to regulatory requirements or Company data privacy policies, the Company shall promptly notify the City of such restrictions. The City acknowledges that the requested information is confidential information of the Company and the Company asserts that disclosure to members of the public would be contrary to the public interest. Accordingly, the City shall deny the right of inspection of the Company's confidential information as set forth in Section 24-72-204(3)(a)(IV), C.R.S., as may be amended from time to time (the "Open Records Act"). If an Open Records Act request is made by any third
party for confidential or proprietary information that the Company has provided to the City pursuant to this franchise, the City will immediately notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the City. In no circumstance shall the City provide to any third-party confidential information provided by the Company pursuant to this franchise without first conferring with the Company. Provided the City complies with the terms of this Section, the Company shall defend, indemnify and hold the City harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding. As used in this Section, as-built drawings refers to hard copies of the facility drawings as maintained in the Company's business records and shall not include information maintained in the Company's geographical information system. The Company shall not be required to create drawings that do not exist at the time of the request, but in such case will work with the City on a case by case basis to locate Company facilities as necessary. (Ord. 2017-2 §1(Exh. A))

Sec. 5-59. Excavation and construction.

The Company shall be responsible for obtaining, paying for, and complying with all applicable permits, in the manner required by the laws, ordinances, and regulations of the City, to the extent consistent with industry standards. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing relocations requested by the City under Section 5-61 and undergrounding requested by the City under Division 11, the City will not require the Company to pay the fees charged for such permits. Upon the Company submitting a construction design plan, the City shall promptly and fully advise the Company in writing of all requirements for restoration of City streets, or other City property in advance of Company excavation projects in City streets, based upon the design submitted. The Company will make reasonable efforts to give the City advance notice of all Company work in Colorado Department of Transportation (CDOT) rights-of-way within the City. (Ord. 2017-2 §1(Exh. A))

Sec. 5-60. Restoration.

Subject to Section 5-58(d), when the Company does any work in or affecting City streets, or other City property, it shall, at its own expense, promptly remove any obstructions placed thereon or therein by the Company and restore such City streets or other City property to a condition that is substantially the same as existed before the work, and that meets applicable City standards. If weather or other conditions do not permit the complete restoration required by this Section, the Company may with the approval of the City, temporarily restore the affected City streets, or other City property, provided that such temporary restoration is not at the City's expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the City, the Company shall restore City streets, or other City property to a better condition than existed before the Company work was undertaken, provided that the City shall be responsible for any incremental costs of such restoration not required by then-current City standards, and provided the City seeks and/or grants, as applicable, any additional required approvals. If the Company fails to promptly restore City streets, or other City property as required by this Section, and if, in the reasonable discretion of the City immediate action is required for the protection of public health, safety or welfare, the City may restore such City streets, or other City property or remove the obstruction therefrom; provided however, City actions do not interfere with Company facili-
ties. The Company shall be responsible for the actual cost incurred by the City to restore such City streets, or other City property or to remove any obstructions therefrom. In the course of its restoration of City streets, public utility easements or other City property under this Section, the City shall not perform work on Company facilities unless specifically authorized by the Company in writing on a project-by-project basis and subject to the terms and conditions agreed to in such authorization. (Ord. 2017-2 §1(Exh. A))

Sec. 5-61. Relocation of Company facilities.

(a) Relocation obligation. The Company shall temporarily or permanently relocate, change or alter the position of any Company facility (collectively, "relocate(s)," "relocation(s)" or "relocated") in City streets, or in other City property at no cost or expense to the City whenever such relocation is necessary for the completion of any public project. In the case of relocation that is necessary for the completion of any public project in a public utility easement, the Company shall not be responsible for any relocation costs. In the event of any relocation contemplated pursuant to this Section 5-61(a), the Company and the City agree to cooperate on the location and relocation of the Company facilities in the City streets or other City property in order to achieve relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has relocated any Company facility at the City's direction, if the City requests that the same Company facility be relocated within two (2) years, the subsequent relocation shall not be at the Company's expense. Nothing provided herein shall prevent the Company from obtaining reimbursement of its relocation costs from third parties.

(b) Private projects. Subject to Section 5-61(f), the Company shall not be responsible for the expenses of any relocation required by private projects, and the Company has the right to require the payment of estimated reasonable relocation expenses from the party causing, or responsible for, the relocation before undertaking the relocation.

(c) Relocation performance. The relocations set forth in Section 5-61(a) of this franchise shall be completed within a reasonable time, not to exceed one hundred twenty (120) days from the later of the date on which the City requests, in writing, that the relocation commence, or the date when the Company is provided all supporting documentation. The Company shall receive an extension of time to complete a relocation where the Company's performance was delayed due to force majeure or the failure of the City to provide adequate supporting documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold or condition any such extension.

(d) City revision of supporting documentation. Any revision by the City of supporting documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding Company facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under this franchise.

(e) Completion. Each relocation shall be complete only when the Company actually relocates the Company facilities, restores the relocation site in accordance with Section 5-60 of this franchise or as otherwise agreed with the City, and removes from the site equipment, material and other impediments. "Unused" for the purposes of this franchise shall mean that the Company is no longer using the Company facilities in question and has no plans to use the Company facilities in the foreseeable future.
(f) Scope of obligation. Notwithstanding anything to the contrary in this franchise, the Company shall not be required to relocate any Company facilities from property:

(1) Owned by the Company in fee; or

(2) In which the Company has a property right, grant or interest, including without limitation an easement.

(g) Underground relocation. Underground Company facilities shall be relocated underground. Above-ground Company facilities shall be relocated above ground unless the Company is paid for the incremental amount by which the underground cost would exceed the above ground cost of relocation, or the City requests that such additional incremental cost be paid out of available funds under Division 11.

(h) Coordination.

(1) When requested in writing by the City or the Company, representatives of the City and the Company shall meet to share information regarding anticipated projects which will require relocation of Company facilities in City streets and other City property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the City for any public project.

(2) The City shall make reasonable best efforts to provide the Company with one (1) year advance notice of any planned City street repaving. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company facilities that are located underneath City streets within the one-year period if practicable.

(i) Proposed alternatives or modifications. Upon receipt of written notice of a required relocation, the Company may propose an alternative to or modification of the public project requiring the relocation in an effort to mitigate or avoid the impact of the required relocation of Company facilities. The City shall in good faith review the proposed alternative or modification. The acceptance of the proposed alternative or modification shall be at the discretion of the City. In the event the City accepts the proposed alternative or modification, the Company agrees to promptly compensate the City for all additional costs, expenses or delay that the City reasonably determines resulted from the implementation of the proposed alternative. (Ord. 2017-2 §1(Exh. A))

Sec. 5-62. New or modified service requested by City.

The conditions under which the Company shall install new or modified utility service to the City as a customer shall be governed by this franchise and the Company's tariffs and the tariffs shall control in the event of a conflict between this franchise and the tariff. (Ord. 2017-2 §1(Exh. A))

Sec. 5-63. Service to new areas.

If the territorial boundaries of the City are expanded during the term of this franchise, the Company shall, to the extent permitted by law, extend service to residents in the expanded area at the earliest practicable time if the expanded area is within the Company's PUC-certificated service territory. Service to the expanded area shall be in accordance with the terms of the tariffs and this franchise, including the payment of franchise fees. (Ord. 2017-2 §1(Exh. A))

Sec. 5-64. City not required to advance funds if permitted by tariffs.

Upon receipt of the City's authorization for billing and construction, the Company shall install Company facilities to provide utility service to the City as a customer, without requiring the City to advance funds prior to construction. The City shall pay for the installation of Com-
pany facilities once completed in accordance with the tariffs. Notwithstanding anything to the contrary, the provisions of this Section allowing the City to not advance funds prior to construction shall only apply to the extent permitted by the tariffs. (Ord. 2017-2 §1(Exh. A))

Sec. 5-65. Technological improvements.

The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the City when such advances are technically and economically feasible and are safe and beneficial to the City and its residents. (Ord. 2017-2 §1(Exh. A))

DIVISION 7
Reliability

Sec. 5-66. Reliability.

The Company shall operate and maintain Company facilities efficiently and economically, in accordance with industry standards, and in accordance with the standards, systems, methods and skills consistent with the provision of adequate, safe and reliable utility service. (Ord. 2017-2 §1(Exh. A))

Sec. 5-67. Franchise performance obligations.

The Company recognizes that, as part of its obligations and commitments under this franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical and workmanlike manner. (Ord. 2017-2 §1(Exh. A))

Sec. 5-68. Reliability reports.

Upon written request, the Company shall provide the City with a report regarding the reliability of Company facilities and utility service. (Ord. 2017-2 §1(Exh. A))

DIVISION 8
Company Performance Obligations

Sec. 5-69. New or modified service to City facilities.

In providing new or modified utility service to City facilities, the Company agrees to perform as follows:

(a) Performance. The Company shall complete each project requested by the City within a reasonable time. The parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the City makes a written request and provides the required supporting documentation for all Company facilities other than traffic facilities. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to force majeure. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

(b) City revision of supporting documentation. Any revision by the City of supporting documentation provided to the Company that causes the Company to substantially redesign or substantially change its plans regarding new or modified service to City facilities shall be deemed good cause for a reasonable extension of time to complete the relocation under this franchise. The Company shall advise the City of a claimed extension under this provision, including the estimated length of the claimed extension.

(c) Completion/restoration. Each project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of this franchise, or as otherwise agreed with the City, and removes or properly abandons,
Sec. 5-70. Adjustments to Company facilities.

The Company shall perform adjustments to Company facilities that are consistent with industry standards, including manhole rings and other appurtenances in City streets, and other City property, to accommodate City street maintenance, repair and paving operations at no cost to the City. In providing such adjustments to Company facilities, the Company agrees to perform as follows:

(a) Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed thirty (30) days from the date upon which the City makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to force majeure. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown.

(b) Completion/restoration. Each such adjustment shall be complete only when the Company actually adjusts and, if required, readjusts, Company facilities to accommodate City operations in accordance with City instructions following City paving operations.

(c) Coordination. As requested by the City or the Company, representatives of the City and the Company shall meet regarding anticipated City Street maintenance operations which will require such adjustments to Company facilities in City streets or other City property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section. (Ord. 2017-2 §1(Exh. A))

Sec. 5-71. Third party damage recovery.

(a) Damage to Company interests. If any individual or entity damages any Company facilities, to the extent permitted by law the City will notify the Company of any such incident of which it has knowledge and will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

(b) Damage to Company property for which the City is responsible. If any individual or entity damages any Company facilities for which the City is obligated to reimburse the Company for the cost of the repair or replacement, to the extent permitted by law, the Company will notify the City of any such incident of which it has knowledge and will provide to the City within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

(c) Meeting. The Company and the City agree to meet periodically upon written request of either party for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company facilities. (Ord. 2017-2 §1(Exh. A))
shall render bills monthly to the offices of the City for utility service and other related services for which the Company is entitled to payment.

(b) Address for billing. Billings for service rendered during the preceding month shall be sent to the person(s) designated by the City, and payment for same shall be made as prescribed in this franchise and the applicable tariffs.

(c) Supporting documents. To the extent requested by the City, the Company shall provide all billings and any underlying supporting documentation reasonably requested by the City in an editable and manipulatable electronic format that is acceptable to the Company and the City.

(d) Annual meetings. The Company agrees to meet with the City on a reasonable basis at the City's request, but no less frequently than once a year, for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the City. (Ord. 2017-2 §1(Exh. A))

Sec. 5-73. Payment to City.

In the event the City determines after written notice to the Company that the Company is liable to the City for payments, costs, expenses or damages of any nature, and subject to the Company's right to challenge such determination, the City may deduct all monies due and owing the City from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company's designee and a designee of the City to discuss such determination. The City agrees to attend such a meeting. As an alternative to such deduction and subject to the Company's right to challenge, the City may bill the Company for such assessment(s), in which case, the Company shall pay each such bill within thirty (30) days of the date of receipt of such bill unless it challenges the validity of the charge. If the Company challenges the City determination of liability, the City shall make such payments to the Company for utility service received by City pursuant to the tariffs until the challenge has been finally resolved. (Ord. 2017-2 §1(Exh. A))

DIVISION 10
Use of Company Facilities

Sec. 5-74. City use of Company electric distribution poles.

The City shall be permitted to make use of Company electric distribution poles in the City, subject to the applicable tariffs, without a use fee for the placement of City equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose. The City shall be responsible for costs associated with modifications to Company electric distribution poles to accommodate the City's use of such Company electric distribution poles and for any electricity used. No such use of Company electric distribution poles may occur if it would constitute a safety hazard or would interfere with the Company's use of Company facilities. Any such City use must comply with the National Electric Safety Code and all other applicable laws, rules, regulations and industry standards. (Ord. 2017-2 §1(Exh. A))

Sec. 5-75. Third party use of Company electric distribution poles.

If requested in writing by the City, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the City to use City streets or other City property to utilize Company electric distribution poles in City streets and other City property, subject to the tariffs, for the placement of their facilities upon approval by the Company and
agreement upon reasonable terms and conditions, including payment of fees established by the Company. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company facilities. The Company shall not be required to permit the use of Company electric distribution poles for the provision of utility service except as otherwise required by law. (Ord. 2017-2 §1(Exh. A))

Sec. 5-76. City use of Company transmission rights-of-way.

The Company shall offer to grant to the City use of transmission rights-of-way which it now, or in the future, owns in fee within the City for trails, parks and open space on terms comparable to those offered to other municipalities; provided, however, that the Company shall not be required to make such an offer in any circumstance where such use would constitute a safety hazard or would interfere with the Company's use of the transmission right-of-way. To exercise this right, the City must make a specific, advance written request to the Company for any such use and must enter such written agreements as the Company may reasonably require. (Ord. 2017-2 §1(Exh. A))

Sec. 5-77. Emergencies.

Upon written request, the Company shall assist the City in developing an emergency management plan that is consistent with Company policies. The City and the Company shall work cooperatively with each other in any emergency or disaster situation to address the emergency or disaster. (Ord. 2017-2 §1(Exh. A))

DIVISION 11
Undergrounding of Overhead Facilities

Sec. 5-78. Underground electrical lines in new areas.

Upon payment to the Company of the charges provided in the tariffs or their equivalent, the Company shall place all newly constructed electrical distribution lines in newly developed areas of the City underground in accordance with applicable laws, regulations and orders of the City. Such underground construction shall be consistent with industry standards. (Ord. 2017-2 §1(Exh. A))

Sec. 5-79. Underground conversion at expense of Company.

(a) Underground conversion program. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's electric gross revenues, for the purpose of undergrounding its existing overhead electric distribution lines in the City in City streets (excluding alleys and access easements), and other City property, as may be requested by the City (the "Underground Program"), so long as the underground conversion does not result in end use customers of the Company incurring any costs related to the conversion and does not require the Company to obtain any additional land use rights. If the City requires relocation of overhead electric distribution facilities in City streets and other City property and there is no room to relocate the Company facilities overhead, the Company may relocate the Company facilities underground, and may charge the incremental cost of undergrounding to the Underground Program.

(b) Unexpended portion and advances. Any unexpended portion of the Underground Program shall be carried over to succeeding years and, in addition, upon request by the City, the Company agrees to advance and expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance provided there are at least three (3) years remaining under the term of this franchise. Any amounts so advanced shall be credited against amounts to be expended in succeeding years. Any funds left accumulated under any prior franchise shall be carried over to this franchise. Notwithstanding the foregoing, the
City shall have no vested interest in monies allocated to the Underground Program and any monies in the Underground Program not expended at the expiration or termination of this franchise shall remain the property of the Company. At the expiration or termination of this franchise, the Company shall not be required to underground any existing overhead facilities pursuant to this Article, but may do so in its sole discretion.

(c) System-wide undergrounding. If, during the term of this franchise, the Company receives authority from the PUC to undertake a system-wide program or programs of undergrounding its electric distribution facilities system wide, the Company shall budget and allocate to the program of undergrounding in the City such amount as may be determined and approved by the PUC, but in no case shall such amount be less than the one percent (1%) of annual electric gross revenues provided above.

(d) City requirement to underground. In addition to the provisions of this Article, the City may require any above ground Company facilities in City streets, and other City property to be moved underground at the City's expense. (Ord. 2017-2 §1(Exh. A))

Sec. 5-80. Undergrounding performance.

Upon receipt of a written request from the City, the Company shall underground Company facilities pursuant to the provisions of this Article, in accordance with the procedures set forth in this Section.

(a) Estimates. Promptly upon receipt of an undergrounding request from the City and the supporting documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the City to review and, if acceptable to the City, the City will issue a project authorization. At the City's request, the Company will provide all documentation that forms the basis of the estimate that is not proprietary. The Company will not proceed with any requested project until the City has provided a written acceptance of the Company's estimate.

(b) Performance. The Company shall complete each undergrounding project requested by the City within a reasonable time considering the size and scope of each project, not to exceed two hundred forty (240) days from the later of the date upon which the City makes a written request or the date the City provides to the Company all supporting documentation. The Company shall have one hundred twenty (120) days after receiving the City's written request to design project plans, prepare the good faith estimate, and transmit same to the City for review. If the City's approval of the plans and estimate has not been granted, the Company's good faith estimate will be void sixty (60) days after delivery of the plans and estimate to the City. If the plans and estimate are approved by the City, the Company shall have one hundred twenty (120) days to complete the project, from the date of the City’s authorization of the underground project, plus any of the one hundred twenty (120) unused days in preparing the good faith estimate. At the Company’s sole discretion, if the good faith estimate has expired because the City has not approved the same within sixty (60) days, the Company may extend the good faith estimate or prepare a new estimate using current prices. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a force majeure condition. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.
(c) City revision of supporting documentation. Any revision by the City of supporting documentation provided to the Company that causes the Company to substantially redesign or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under this franchise. The Company shall advise the City of a claimed extension under this provision, including the estimated length of the claimed extension and the revised date by which the undergrounding project is estimated to be completed.

(d) Completion/restoration. Each undergrounding project undertaken pursuant to this Article shall be complete only when the Company actually undergrounds the designated Company facilities and restores the undergrounding site in accordance with Section 5-60 of this franchise, or as otherwise agreed with the City. When performing underground conversions of overhead facilities, the Company shall make reasonable efforts consistent with its contractual obligations to persuade joint users of Company distribution poles to remove their facilities from such poles within the time allowed by this Article.

(e) Report of actual costs. Upon completion of each undergrounding project undertaken pursuant to this Article, the Company shall submit to the City a detailed report of the Company's actual cost to complete the project and the Company shall reconcile this total actual cost with the accepted cost estimate. The report shall be provided within one hundred twenty (120) days after completion of the project and written request from the City.

(f) Audit of underground projects. The City may require the Company to undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The City shall make any such request in writing within one hundred twenty (120) days of receipt of the report of actual costs, as referenced in Section 5-80(e). Such audits shall be limited to projects completed within three hundred sixty-five (365) days of the date when the audit is requested. The cost of any such independent audit shall reduce the amount of the Underground Program. The Company shall cooperate with any audit and the independent auditor shall prepare and provide to the City and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the City, only those actual project costs confirmed and verified by the independent auditor as reasonable and necessary to complete the project shall be charged against the Underground Program balance. (Ord. 2017-2 §1(Exh. A))

Sec. 5-81. Audit of underground program.

Upon written request, every three (3) years commencing at the end of the third year of this franchise, the Company shall cause an independent auditor to investigate and determine the correctness of the charges to the Underground Program. Such audits shall be limited to the previous three (3) calendar years. Audits performed pursuant to this Section shall be limited to charges to the Underground Program and shall not include an audit of individual underground projects. The independent auditor shall provide to the City and the Company a written report containing its findings. The Company shall reconcile the Underground Program balance consistent with the findings contained in the independent auditor's written report. The costs of the audit and investigation shall be charged against the Underground Program balance. (Ord. 2017-2 §1(Exh. A))

Sec. 5-82. Cooperation with other utilities.

When undertaking an undergrounding project the City and the Company shall coordinate
Sec. 5-83. Planning and coordination of undergrounding projects.

The City and the Company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this Article as a part of the review and planning for other City and Company construction projects. The City and the Company agree to meet, as required, to review the progress of the current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the City and the Company in order to achieve the orderly undergrounding of Company facilities. Representatives of both the City and the Company shall meet periodically to review the Company's undergrounding of Company facilities and at such meetings shall review:

(a) Undergrounding, including conversions, public projects and replacements that have been accomplished or are underway, together with the Company's plans for additional undergrounding; and

(b) Public projects anticipated by the City.

(Ord. 2017-2 §1(Exh. A))
The Company agrees to negotiate in good faith long term contracts to purchase City-generated power made available for sale, consistent with PUC requirements and other applicable requirements. The Company further agrees to offer transmission and delivery services to the City that are required by judicial, statutory or regulatory directive and that are comparable to the services offered to any other customer with similar generation facilities.

(b) Franchise not to limit City's or Company's rights. Nothing in this franchise prohibits the City from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law, nor does it affect the Company's rights and obligations pursuant to any certificate of public convenience and necessity granted by the PUC. (Ord. 2017-2 §1(Exh. A))

DIVISION 14
Environment and Conservation

Sec. 5-86. Environmental leadership.

The City and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the utility service provided by the Company under this franchise. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of energy conservation and energy efficiency measures, clean energy measures, and promoting and implementing the use of renewable energy resources on both a distributed and centralized basis. The Company shall continue to cost-effectively monitor its operations to mitigate environmental impacts; shall meet the requirements of environmental laws, regulations and permits; shall invest in cost-effective, environmentally sound technologies; shall consider environmental issues in its planning and decision making; and shall support environmental research and development projects and partnerships in our communities through various means, including without limitation corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines. If requested in writing by the City on or before December 1 of each year, the Company shall provide the City a written report describing its progress in carbon reduction and other environmental efforts, and the parties shall meet at a mutually convenient time and place for a discussion of such. In meeting its obligation under this Section, the Company is not precluded from providing existing internal and external reports that may be used for other reporting requirements. (Ord. 2017-2 §1(Exh. A))

Sec. 5-87. Conservation.

The City and the Company recognize and agree that energy conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The City and the Company further recognize that creative and effective energy conservation solutions are crucial to sustainable development. The Company recognizes and shares the City's stated objectives to advance the implementation of cost-effective energy efficiency and energy conservation programs that direct opportunities to residents to manage more efficiently their use of energy and thereby create the opportunity to reduce their energy bills. The Company commits to offer programs that attempt to capture market opportunities for cost-effective energy efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate energy efficiency in new construction projects, and re-commissioning programs to analyze ex-
existing systems to optimize performance and conserve energy according to current and future demand side management ("DSM") programs. In doing so, the Company recognizes the importance of: (a) implementing cost-effective programs the benefits of which would otherwise be lost if not pursued in a timely fashion; and (b) developing cost-effective programs for the various classes of the Company's customers, including low-income customers. The Company shall advise the City and its residents of the availability of assistance that the Company makes available for investments in energy conservation through newspaper advertisements, bill inserts and energy efficiency workshops and by maintaining information about these programs on the Company's website. Further, at the City's request, the Company's Area Manager shall act as the primary liaison with the City who will provide the City with information on how the City may take advantage of reducing energy consumption in City facilities and how the City may participate in energy conservation and energy efficiency programs sponsored by the Company. As such, the Company and the City commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and residents, including low-income customers. The Company agrees to help the City participate in Company programs and, when opportunities exist to partner with others, such as the State of Colorado, the Company will help the City pursue those opportunities. In addition, and in order to assist the City and its residents' participation in renewable energy resource programs, the Company shall: notify the City regarding eligible renewable energy resource programs; provide the City with technical support regarding how the City may participate in renewable energy resource programs; and advise residents regarding eligible renewable energy resource programs. Notwithstanding the foregoing, to the extent that any Company assistance is needed to support renewable energy resource programs that are solely for the benefit of Company customers located within the City, the Company retains the sole discretion as to whether to incur such costs. (Ord. 2017-2 §1(Exh. A))

Sec. 5-88. Continuing commitment.

It is the express intention of the City and the Company that the collaborative effort provided for in this Article continue for the entire term of this franchise. The City and the Company also recognize, however, that the programs identified in this Article may be for a limited duration and that the regulations and technologies associated with energy conservation are subject to change. Given this variability, the Company agrees to maintain its commitment to sustainable development and energy conservation for the term of this franchise by continuing to provide leadership, support and assistance, in collaboration with the City, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this franchise in order to help the City achieve its environmental goals. (Ord. 2017-2 §1(Exh. A))

Sec. 5-89. PUC approval.

Nothing in this Article shall be deemed to require the Company to invest in technologies or to incur costs that it has a good faith belief the PUC will not allow the Company to recover through the ratemaking process. (Ord. 2017-2 §1(Exh. A))

Sec. 5-90. Sustainability committee.

To the extent the City has a sustainability committee, it shall provide the Company an opportunity to have a Company representative on such committee. Any Company representative may participate in regular committee meetings for the purpose of providing information on Company programs and offerings and will be a meaningful participant as it relates to Company programs and offerings. (Ord. 2017-2 §1(Exh. A))
DIVISION 15
Transfer of Franchise

Sec. 5-91. Consent of City required.

The Company shall not transfer or assign any rights under this franchise to an unaffiliated third party, except by merger with such third party, or, except when the transfer is made in response to legislation or regulatory requirements, unless the City approves such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld, conditioned or delayed. (Ord. 2017-2 §1(Exh. A))

Sec. 5-92. Transfer fee.

In order that the City may share in the value this franchise adds to the Company's operations, any transfer or assignment of rights granted under this franchise requiring City approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the City a transfer fee in an amount equal to the proportion of the amount of franchise fees paid by the Company to the City in the most recent calendar year (the numerator) to the amount of franchise fees paid to the City and County of Denver in the most recent calendar year (the denominator) multiplied by one million dollars ($1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of residents. (Ord. 2017-2 §1(Exh. A))

DIVISION 16
Continuation of Utility Service

Sec. 5-93. Continuation of utility service.

In the event this franchise is not renewed at the expiration of its term or is terminated for any reason, and the City has not provided for alternative utility service, the Company shall have no obligation to remove any Company facilities from City streets, public utility easements or other City property or discontinue providing utility service unless otherwise ordered by the PUC, and shall continue to provide utility service within the City until the City arranges for utility service from another provider. The City acknowledges and agrees that the Company has the right to use City streets, other City property and public utility easements during any such period. The Company further agrees that it will not withhold any temporary utility service necessary to protect the public. The City agrees that in the circumstances of this Article, the Company shall be entitled to monetary compensation as provided in the tariffs and the Company shall be entitled to collect from residents and, upon the City's compliance with applicable provisions of law, shall be obligated to pay the City, at the same times and in the same manner as provided in this franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City's streets, and other City property. Only upon receipt of written notice from the City stating that the City has adequate alternative utility service for residents and upon order of the PUC shall the Company be allowed to discontinue the provision of utility service to the City and its residents. (Ord. 2017-2 §1(Exh. A))

DIVISION 17
Indemnification and Immunity

Sec. 5-94. City held harmless.

The Company shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or arising from the grant of this franchise, the exercise by the Company of the related rights, and shall pay the costs of defense plus reasonable attorney fees. The City shall: (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) unless in the City's judgment a conflict of interest may exist between the City and the Company with
With respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel reasonably satisfactory to the City. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. If such defense is not assumed by the Company or if the City determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the City or any of its officers, agents or employees or to the extent that the City is acting in its capacity as a customer of record of the Company. Unless otherwise required by law, no expenses paid or reimbursed by the Company under this Section shall be surcharged solely to residents. (Ord. 2017-2 §1(Exh. A))

Sec. 5-95. Immunity.

Nothing in this Section or any other provision of this franchise shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City may have under the Colorado Governmental Immunity Act (Section 24-10-101 et seq., C.R.S.) or of any other defenses, immunities, or limitations of liability available to the City by law. (Ord. 2017-2 §1(Exh. A))

DIVISION 18
Breach

Sec. 5-96. Change of tariffs.

The City and the Company agree to take all reasonable and necessary actions to assure that the terms of this franchise are performed. The Company reserves the right to seek a change in its tariffs, including without limitation the rates, charges, terms, and conditions of providing utility service to the City and its residents, and the City retains all rights that it may have to intervene and participate in any such proceedings. (Ord. 2017-2 §1(Exh. A))

(a) Notice/cure/remedies. Except as otherwise provided in this franchise, if a party (the "Breaching Party") to this franchise fails or refuses to perform any of the terms or conditions of this franchise (a "breach"), the other party (the "Non-Breaching Party") may provide written notice to the Breaching Party of such breach. Upon receipt of such notice, the Breaching Party shall be given a reasonable time, not to exceed thirty (30) days in which to remedy the breach or, if such breach cannot be remedied in thirty (30) days, such additional time as reasonably needed to remedy the breach, but not exceeding an additional thirty-day period, or such other time as the parties may agree. If the Breaching Party does not remedy the breach within the time allowed in the notice, the Non-Breaching Party may exercise all lawful remedies for such breach.

(b) Termination of franchise by City. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this franchise (a "material breach"), the City may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days in which to remedy the breach or, if such material breach cannot be remedied in ninety (90) days, such additional time as reasonably needed to remedy the breach, but not exceeding an additional ninety-day period, or such other time as the parties may agree. If the Company does not remedy the material breach within the time allowed in the notice, the City may, in its sole discretion, terminate this franchise. This remedy shall be in addition to the City's right to exercise any of the remedies provided for elsewhere in this fran-
chise. Upon such termination, the Company shall continue to provide utility service to the City and its residents (and shall continue to have associated rights and grants needed to provide such service) until the City makes alternative arrangements for such service and until otherwise ordered by the PUC and the Company shall be entitled to collect from residents and, upon the City complying with applicable provisions of law, shall be obligated to pay the City, at the same times and in the same manner as provided in this franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City streets, and other City property. Unless otherwise provided by law, the Company shall be entitled to collect such amount from residents.

(c) Company shall not terminate franchise. In no event does the Company have the right to terminate this franchise.

(d) No limitation. Except as provided herein, nothing in this franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise. (Ord. 2017-2 §1(Exh. A))

DIVISION 19
Amendments

Sec. 5-98. Proposed amendments.

At any time during the term of this franchise, the City or the Company may propose amendments to this franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party. (Ord. 2017-2 §1(Exh. A))

Sec. 5-99. Effective amendments.

No alterations, amendments or modifications to this franchise shall be valid unless executed in writing by the parties, which alterations, amendments or modifications shall be adopted with the same formality used in adopting this franchise, to the extent required by law. Neither this franchise, nor any term herein, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever. Any amendment of the franchise shall become effective only upon the approval of the PUC, if such PUC approval is required. (Ord. 2017-2 §1(Exh. A))

DIVISION 20
Equal Opportunity

Sec. 5-100. Economic development.

The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business community. The Company believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is committed also to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders. (Ord. 2017-2 §1(Exh. A))

Sec. 5-101. Employment.

(a) Programs. The Company is committed to undertaking programs that identify, consider and develop persons of color, women and mem-
bers of other under-represented groups for positions at all skill and management levels within the Company.

(b) Businesses. The Company recognizes that the City and the business community in the City, including women and minority owned businesses, provide a valuable resource in assisting the Company to develop programs to promote persons of color, women and members of underrepresented communities into management positions, and agrees to keep the City regularly advised of the Company's progress by providing the City a copy of the Company's annual affirmative action report upon the City's written request.

(c) Recruitment. In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies such as partnering with colleges, universities and technical schools with diverse student populations, utilizing diversity-specific media to advertise employment opportunities, internships, and engaging recruiting firms with diversity-specific expertise.

(d) Advancement. The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and members of under-represented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training and leadership programs.

(e) Non-discrimination. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all Federal, State or local laws. The Company shall not, solely because of race, creed, color, religion, gender, sexual orientation, marital status, age, military status, national origin or ancestry, or physical or mental disability, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified.

(f) Board of Directors. The Company shall identify and consider women, persons of color and other under-represented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the shareholders, customers and employees of the Company. (Ord. 2017-2 §1(Exh. A))

Sec. 5-102. Contracting.

(a) Contracts. It is the Company's policy to make available to minority and women owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to minority and women owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.

(b) Community outreach. The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the participation of minority and women owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the City regularly advised of the Company's programs.

(c) Community development. The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing pre-
dominately minority owned, women owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority owned, women owned and disadvantaged businesses to contract with the Company. (Ord. 2017-2 §1(Exh. A))

Sec. 5-103. Coordination.

City agencies provide collaborative leadership and mutual opportunities or programs relating to City based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Article with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation. (Ord. 2017-2 §1(Exh. A))

DIVISION 21
Miscellaneous

Sec. 5-104. No waiver.

Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this franchise by any failure of the other, or any of its officers, employees, or agents, upon any one (1) or more occasions, to insist upon or to seek compliance with any such terms and conditions. (Ord. 2017-2 §1(Exh. A))

Sec. 5-105. Successors and assigns.

The rights, privileges, and obligations, in whole or in part, granted and contained in this franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Division 15 of this franchise. Upon a transfer or assignment pursuant to Division 15, the Company shall be relieved from all liability from and after the date of such transfer. (Ord. 2017-2 §1(Exh. A))

Sec. 5-106. Third parties.

Nothing contained in this franchise shall be construed to provide rights to third parties. (Ord. 2017-2 §1(Exh. A))

Sec. 5-107. Notice.

Both parties shall designate from time to time in writing representatives for the Company and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise. Notice shall be in writing and forwarded by certified mail, reputable overnight courier or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Notice shall be deemed received: (a) three (3) days after being mailed via the U.S. Postal Service, (b) one (1) business day after mailed if via reputable overnight courier, or (c) upon hand delivery if delivered by courier. Until any such change shall hereafter be made, notices shall be sent as follows:

To the City:

City Clerk
City of Black Hawk
P.O. Box 68
Black Hawk, CO 80422

With a copy to:

City Attorney
City of Black Hawk
P.O. Box 68
Black Hawk, CO 80422
To the Company:

Regional Vice President,
Customer and Community Relations
Public Service Company of Colorado
P.O. Box 840
Denver, CO 80201

With a copy to:

Legal Department
Public Service Company of Colorado
P.O. Box 840
Denver, CO 80201

and

Area Manager
Public Service Company of Colorado
5460 West 60th Avenue
Arvada, CO 80003

Sec. 5-108. Examination of records.

The parties agree that any duly authorized representative of the City and the Company shall have access to and the right to examine any directly pertinent non-confidential books, documents, papers, and records of the other party involving any activities related to this franchise. All such records must be kept for a minimum of the lesser of three (3) years or the time period permitted by a party's record retention policy. To the extent that either party believes in good faith that it is necessary in order to monitor compliance with the terms of this franchise to examine confidential books, documents, papers, and records of the other party, the parties agree to meet and discuss providing confidential materials, including without limitation providing such materials subject to a reasonable confidentiality agreement that effectively protects the confidentiality of such materials and complies with PUC rules and regulations. (Ord. 2017-2 §1(Exh. A))

Sec. 5-109. List of utility property.

The Company shall provide the City, upon request not more than once every two (2) years, a list of electric utility-related real property owned in fee by the Company within the County in which the City is located. All such records must be kept for a minimum of three (3) years or such shorter duration if required by Company policy. (Ord. 2017-2 §1(Exh. A))

Sec. 5-110. PUC filings.

Upon written request by the City, the Company shall provide the City non-confidential copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the Public Utilities Commission. Notwithstanding the foregoing, notice regarding any gas and electric filings that may affect utility service rates in the City shall be sent to the City upon filing. (Ord. 2017-2 §1(Exh. A))

Sec. 5-110.1. Information.

Upon written request, the Company shall provide the City Clerk or the City Clerk's designee with:

(a) A copy of the Company's or its parent company's consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company's website;

(b) Maps or schematics indicating the location of specific Company facilities (subject to City executing a confidentiality agreement as required by Company policy), including gas or electric lines, located within the City, to the extent those maps or schematics are in existence at the time of the request and related to an ongoing project within the City. The Company does not represent or warrant the accuracy of any such maps or schematics; and
(c) A copy of any report required to be prepared for a Federal or State agency detailing the Company's efforts to comply with Federal and State air and water pollution laws. (Ord. 2017-2 §1(Exh. A))

Sec. 5-110.2. Payment of taxes and fees.

(a) Impositions. Except as otherwise provided herein, the Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this franchise ("impositions"), provided that the Company shall have the right to contest any such impositions and shall not be in breach of this Section so long as it is actively contesting such impositions.

(b) City liability. The City shall not be liable for the payment of late charges, interest or penalties of any nature other than pursuant to applicable tariffs. (Ord. 2017-2 §1(Exh. A))

Sec. 5-110.3. Conflict of interest.

The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City. (Ord. 2017-2 §1(Exh. A))

Sec. 5-110.4. Certificate of public convenience and necessity.

The City agrees to support the Company's application to the PUC to obtain a certificate of public convenience and necessity to exercise its rights and obligations under this franchise. (Ord. 2017-2 §1(Exh. A))

Sec. 5-110.5. Authority.

Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this franchise on behalf of the parties and to bind the parties to its terms. The persons executing this franchise on behalf of each of the parties warrant that they have full authorization to execute this franchise. The City acknowledges that notwithstanding the foregoing, the Company requires a certificate of public convenience and necessity from the PUC in order to operate under the terms of this franchise. (Ord. 2017-2 §1(Exh. A))

Sec. 5-110.6. Severability.

Should any one (1) or more provisions of this franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, to the extent allowed by law, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one (1) or more substitute provisions that will achieve the original intent of the parties hereunder. (Ord. 2017-2 §1(Exh. A))

Sec. 5-110.7. Force majeure.

Neither the City nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to force majeure. (Ord. 2017-2 §1(Exh. A))

Sec. 5-110.8. Earlier franchises superseded.

This franchise shall constitute the only franchise between the City and the Company related to the furnishing of utility service, and it supersedes and cancels all former franchises related to the furnishing of utility service.
between the parties. (Ord. 2017-2 §1(Exh. A))

Sec. 5-110.9. Titles not controlling.

Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this franchise. (Ord. 2017-2 §1(Exh. A))

Sec. 5-110.10. Applicable law.

Colorado law shall apply to the construction and enforcement of this franchise. The parties agree that venue for any litigation arising out of this franchise shall be in the District Court for Gilpin County, State of Colorado. (Ord. 2017-2 §1(Exh. A))

Sec. 5-110.11. Payment of expenses incurred by City in relation to franchise agreement.

The Company shall pay for expenses reasonably incurred by the City for the adoption of this franchise, including the publication of notices, publication of ordinances, and photocopying of documents. (Ord. 2017-2 §1(Exh. A))

Sec. 5-110.12. Costs of compliance with franchise.

The parties acknowledge that PUC rules, regulations and final decisions may require that costs of complying with certain provisions of this franchise be borne by customers of the Company who are located within the City. (Ord. 2017-2 §1(Exh. A))

Sec. 5-110.13. Conveyance of City streets, public utility easements or other City property.

In the event the City vacates, releases, sells, conveys, transfers or otherwise disposes of a City street, or any portion of a public utility easement or other City property in which Company facilities are located, the City shall reserve an easement in favor of the Company over that portion of the City street, public utility easement or other City property in which such Company facilities are located. The Company and the City shall work together to prepare the necessary legal description to effectuate such reservation. For the purposes of Section 5-61(a) of this franchise, the land vacated, released, sold, conveyed, transferred or otherwise disposed of by the City shall no longer be deemed to be a City street, or other City property from which the City may demand the Company temporarily or permanently relocate Company facilities at the Company's expense. (Ord. 2017-2 §1(Exh. A))

Sec. 5-110.14. Audit.

For any audits specifically allowed under this franchise, such audits shall be subject to the applicable tariff and PUC rules and regulations. Audits in which the auditor is compensated on the basis of a contingency fee arrangement shall not be permitted. (Ord. 2017-2 §1(Exh. A))

Sec. 5-110.15. Land use coordination.

The City shall coordinate with the Company regarding its land use planning. This coordination shall include meeting with the Company and identifying areas for future utility development. (Ord. 2017-2 §1(Exh. A))

ARTICLE III

Emergency Telephone Service

Sec. 5-111. Intent and applicability.

The City Council determines and declares that it is necessary to protect and preserve the health, safety and welfare of the citizens of the City and the County through the construction, installation and use of a 911 enhanced emergency telephone service. (Ord. 94-21 §1)
Sec. 5-112. Authority authorization.

The City Council constitutes, authorizes and empowers the Gilpin County Emergency Telephone Service Authority as a separate entity with full powers to enter into contracts, to sue and be sued, and otherwise do all things necessary to carry out the duties delegated under the intergovernmental agreement. (Ord. 94-21 §3)

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ARTICLE I

Business Licenses

Sec. 6-1. Purpose.

The purpose of this Article is the regulation and registration of businesses operating within the City for the health, safety and welfare of the citizens of the City and for the proper collection of taxes which supports the City. (Ord. 91-12 §1)

Sec. 6-2. License required.

Every person must obtain a license from the City before operating, conducting or carrying on any retail trade, profession or business within the City, except: nonprofit state corporations, excluding federal, state or municipal corporations, are hereby exempt from the license requirements set forth in this Article. (Ord. 91-12 §2)

Sec. 6-3. Separate license required for each trade or business.

Any person operating, conducting or carrying on any retail trade, profession or business within the City must obtain a separate license for each location of the business. (Ord. 91-12 §3)

Sec. 6-4. License application.

An application for a business license shall be made to the City Clerk on forms provided by the City. Every applicant shall state under oath or affirmation such facts as may be required for the granting of such license. It is unlawful for any person to make any false statement or misrepresentation in connection with any application for a license, and the penalties provided in Title 31, C.R.S., shall be applicable. (Ord. 91-12 §4)

Sec. 6-5. License fees.

Every person required to be licensed by the provisions of this Article shall pay the amount set forth pursuant to a separate resolution setting the City of Black Hawk Fee Schedule. (Ord. 91-12 §5; Ord. 2015-6, §9)

Sec. 6-6. Payment of fee.

Before granting the license, the fee required for the license must be paid at the office of the City Clerk. (Ord. 91-12 §6)

Sec. 6-7. Issuance.

Upon receipt of the required fee and compliance with Section 6-4, the City Clerk will issue a license that indicates that the license tax has been paid for the specified year. (Ord. 91-12 §7)

Sec. 6-8. Carrying or posting license required.

The license for a particular business location shall be posted at all times in a conspicuous place in the place of business. If the business is not operated, conducted or carried on at a fixed location, then the licensee must carry the license upon his or her person when operating, conducting or carrying on any retail trade, profession or business. Every licensee shall produce his or her license for examination when requested to do so by any City police officer or by any person representing the City. (Ord. 91-12 §8)

Sec. 6-9. License nontransferable.

No license issued under the provisions of this Article shall be transferable from person to person or place to place. (Ord. 91-12 §9)

Sec. 6-10. Period of license.

All licenses shall expire January 1 of each calendar year. (Ord. 91-12 §10)
Sec. 6-11. Suspension.

A license may be suspended:

(1) When any money due the City has not been paid. This includes failure to pay civil penalties, fines, taxes, impact fees or any other money owed to the City.

(2) When any activity conducted by the licensee, his or her employee or agent violates any federal, state or local rule, regulation or law.

(3) Upon failing to comply with the terms and conditions of the license.

(4) Upon any grounds of suspension provided by ordinance. (Ord. 91-12 §11; Ord. 94-1 §1)

Sec. 6-12. Revocation of license.

A license may be revoked by the City:

(1) When it appears that the license was obtained by fraud, misrepresentation or false statements within the application;

(2) When it appears that the activity conducted pursuant to such license is a public nuisance as defined by this Code or statute or violates any federal, state or local rule, regulation or law.

(3) Upon failing to comply with the terms and conditions of the license.

(4) Upon any ground of revocation provided by this Code. (Ord. 91-12 §12; Ord. 94-1 §1)

Sec. 6-13. Notice and hearing prior to suspension or revocation.

All hearings to revoke, suspend or cancel a license shall be before the City Council and conducted according to Article V, Chapter 2 of this Code. The suspension or revocation of any license shall not release or discharge anyone from his or her civil liability for the payment of the taxes, penalty and interest nor from the prosecution of the offense. (Ord. 94-1 §1; Ord. 2015-6, §10)

Sec. 6-14. Cease and desist.

If any business is operating without a license, the Mayor may issue an order to the business to cease and desist all further operation until a license is issued for the business. The order shall give the business three (3) days to pay all amounts due the City; or to post a bond in the amount owing the City and to request in writing a hearing with the City Clerk. If the business does nothing, it shall cease operations on the third day. The hearing will be before the City Council and conducted according to Article V, Chapter 2 of this Code. These proceedings shall not relieve or discharge anyone from the civil liability for the payment of the taxes, penalty and interest nor from the prosecution of the offense. (Ord. 94-1 §1; Ord. 2015-6, §11)

Sec. 6-15. Penalty.

Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. For each day, or portion thereof, during which any violation continues, a person may be cited for a separate civil infraction. The penalties specified in this Section shall be cumulative and nothing shall be construed as either prohibiting or limiting the City from pursuing such other remedies or penalties, including an action at law or equity. (Ord. 94-1 §1)

Secs. 6-16—6-50. Reserved.
ARTICLE II

Alcoholic Beverages

Sec. 6-51. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

*Adult* means a person lawfully permitted to purchase alcoholic beverages.

*Alcoholic beverage* means fermented malt beverage or malt, vinous or spirituous liquors; except that *alcoholic beverage* shall not include confectionery containing alcohol within the limits prescribed by Section 25-5-410(1)(i)(II), C.R.S.

*Bed and breakfast* means an overnight lodging establishment that provides at least one (1) meal per day at no charge other than a charge for overnight lodging and does not sell malt, vinous or spirituous liquors by the drink.

*Brew pub* means a retail establishment that manufactures not more than one million eight hundred sixty thousand (1,860,000) gallons of malt liquor on its premises each year.

*Brewery* means any establishment where malt liquors are manufactured, except brew pubs licensed under this Article.

*City Clerk* means City Clerk of the City of Black Hawk, acting in the City Clerk's capacity as the secretary of the local licensing authority, having the authority vested in the City Clerk under this Article and under Articles 3 and 4 of Title 44, C.R.S.

*Club* means:

   a. A corporation that:

      1. Has been incorporated for not less than three (3) years;
      2. Has a membership that has paid dues for a period of at least three (3) years; and
      3. Has a membership that for three (3) years has been the owner, lessee or occupant of an establishment operated solely for objects of a national, social, fraternal, patriotic, political or athletic nature, but not for pecuniary gain, and the property as well as the advantages of which belong to the members.

   b. A corporation that is a regularly chartered branch, or lodge, or chapter of a national organization that is operated solely for the objects of a patriotic or fraternal organization or society, but not for pecuniary gain.

*Distillery* means any establishment where spirituous liquors are manufactured.

*Fermented malt beverage* means beer and any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any similar product or any combination thereof in water containing not less than one-half of one percent (½%) alcohol by volume.

*Fine* means a form of discipline imposed pursuant to this Article in lieu of a suspension. Any fine shall be the equivalent of twenty percent (20%) of the retail licensee's estimated gross revenues from sales of alcoholic beverages during the period of the proposed suspension, except that the fine shall
be not less than two hundred dollars ($200.00) nor more than five thousand dollars ($5,000.00).

**Good cause**, for the purpose of refusing or denying a license renewal or initial license issuance, means:

a. The licensee or applicant has violated, does not meet or has failed to comply with any of the terms, conditions or provisions of this Article or any rules and regulations promulgated pursuant to this Article;

b. The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license in prior disciplinary proceedings or arose in the context of potential disciplinary proceedings;

c. In the case of a new license, the applicant has not established the reasonable requirements of the neighborhood or the desires of its adult inhabitants as provided in Section 44-3-301(2), C.R.S.; or

d. Evidence that the licensed premises have been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the establishment is located, which evidence must include a continuing pattern of fights, violent activity or disorderly conduct. For purposes of this paragraph, **disorderly conduct** has the meaning as provided for in Section 18-9-106, C.R.S.

**Hard cider** means an alcoholic beverage containing at least one-half of one percent (½%) and less than seven percent (7%) alcohol by volume that is made by fermentation of the natural juice of apples or pears, including but not limited to flavored hard cider and hard cider containing not more than 0.392 gram of carbon dioxide per hundred milliliters. For the purpose of simplicity of administration of this Article, **hard cider** shall in all respects be treated as a vinous liquor except where expressly provided otherwise.

**Hotel** means any establishment with sleeping rooms for the accommodation of guests and having restaurant facilities.

**Inhabitant**, with respect to cities or towns having less than forty thousand (40,000) population, means an individual who resides in a given neighborhood or community for more than six (6) months each year.

**Lewd or indecent displays** means performing acts of or acts which simulate:

a. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

b. The touching, caressing or fondling of the breast, buttocks, anus or genitals;

c. The displaying of the pubic hair, anus, vulva or genitals; and

d. The displaying of the post-pubertal human female breast below a point immediately above the top of the areola, or the displaying of the post-pubertal human female breast where the nipple only or the nipple and the areola only are covered.

**License** means a grant to a licensee to manufacture or sell fermented malt beverages, or malt, vinous or spirituous liquors as provided by this Article.

**Licensed premises** means the premises specified in an application for a license under this Article which are owned or in possession of the licensee and within which such
licensee is authorized to sell, dispense or serve fermented malt beverages, or malt, vinous or spirituous liquors in accordance with the provisions of this Article.

Licensee means a person holding a license issued pursuant to this Article.

Limited winery means any establishment manufacturing not more than one hundred thousand (100,000) gallons, or the metric equivalent thereof, of vinous liquors annually which uses not less than seventy-five percent (75%) Colorado-grown products in the manufacture of such vinous liquors.

Liquor license shall include the following classes of licenses:

a. Retail liquor store license;

b. Liquor licensed drugstore;

c. Beer and wine license;

d. Hotel and restaurant license;

e. Club license;

f. Tavern or gaming tavern license;

g. Optional premises license;

h. Brew pub license;

i. Arts license;

j. Racetrack license; and

k. Lodging and entertainment facility license.

Liquor-licensed drugstore means any drugstore licensed by the state board of pharmacy that has also applied for and has been granted a license by the state licensing authority to sell malt, vinous and spirituous liquors in original sealed containers for consumption off the premises.

Local licensing authority means, for purposes of this Article, the City Council.

Location means a particular parcel of land that may be identified by an address or by other descriptive means.

Lodging and entertainment facility means an establishment that is either: (a) a lodging facility, the primary business of which is to provide the public with sleeping rooms and meeting facilities; or (b) an entertainment facility, the primary business of which is to provide the public with sports or entertainment activities within its licensed premises; and incidental to its primary business, sells and serves alcohol beverages at retail for consumption on the premises, and has sandwiches and light snacks available for consumption on the premises.

Malt liquors includes beer and means any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination thereof, in water containing not less than one-half of one percent (½%) alcohol by volume.

Meal means a quantity of food of such nature as is ordinarily consumed by an individual at regular intervals for the purpose of sustenance.

Medicinal spirituous liquors means any alcoholic beverage, excepting beer and wine, that has been aged in wood for four (4) years and bonded by the United States government and is at least one hundred (100) proof.

Nudity means uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately
above the top of the areola, or the covered human male genitals in a noticeably turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and the areola only are covered.

Optional premises means:

a. Premises specified in an application for a hotel and restaurant license under Title 44, Article 3, C.R.S., with related outdoor sports and recreational facilities for the convenience of its guests or the general public located on or adjacent to the hotel or restaurant which is licensed to serve alcoholic beverages in accordance with the provisions of this Article and at the discretion of the state and local licensing authorities; and

b. The premises specified in an application for an optional premises license located on an applicant's outdoor sports and recreational facility. For purposes of this paragraph, outdoor sports and recreational facility means a facility that charges a fee for the use of such facility.

Person means a natural person, partnership, association, company, corporation or organization or a manager, agent, servant, officer or employee thereof.

Premises means a distinct and definite location, which may include a building, a part of a building, a room or any other definite contiguous area.

Racetrack means any premises where race meets or simulcast races with pari-mutuel wagering are held in accordance with the provisions of Article 60 of Title 12, C.R.S.

Rectify means to blend spirituous liquor with neutral spirits or other spirituous liquors of different age.

Rectifying plant means any establishment where spirituous liquors are blended with neutral spirits or other spirituous liquors of different age.

Resort complex means a hotel with related sports and recreational facilities for the convenience of its guests or the general public located contiguous or adjacent to the hotel.

Resort hotel means a hotel, as defined in Paragraph (12) of this Section, with well-defined occupancy seasons.

Restaurant means an establishment, which is not a hotel as defined in Paragraph (12) of this Section, provided with special space, sanitary kitchen and dining room equipment and persons to prepare, cook and serve meals, where, in consideration of payment, meals, drinks, tobacco and candies are furnished to guests and in which nothing is sold excepting food, drinks, tobacco, candies and items of souvenir merchandise depicting the theme of the restaurant or the geographical or historic subjects of the nearby area. Any establishment connected with any business wherein any business is conducted, excepting hotel business, limited gaming conducted pursuant to Article 47.1 of Title 12, C.R.S., or the sale of food, drinks, tobacco, candies or such items of souvenir merchandise is declared not to be a restaurant. Nothing in this Subsection shall be construed to prohibit the use in a restaurant of orchestras, singers, floor shows, coin-operated music machines, amusement devices that pay nothing of value and cannot by adjustment be made to pay anything of value or other forms of entertainment commonly provided in restaurants.

Retail liquor store means an establishment engaged only in the sale of malt, vinous and spirituous liquors and soft drinks and mixers, all in sealed containers for con-
sumption off the premises; tobaccos, tobacco products, smokers’ supplies and non-food items related to the consumption of such beverages; and liquor-filled candy and food items approved by the state licensing authority, which are prepackaged, labeled and directly related to the consumption of such beverages and are sold solely for the purpose of cocktail garnish in containers up to sixteen (16) ounces. Nothing in this Subsection shall be construed to authorize the sale of food items that could constitute a snack, a meal or portion of a meal.

School means a public, parochial or nonpublic school that provides a basic academic education in compliance with school attendance laws for students in grades one (1) to twelve (12). Basic academic education has the same meaning as set forth in Section 22-33-104(2)(b), C.R.S.

Sealed containers means any container or receptacle used for holding an alcoholic beverage, which container or receptacle is corked or sealed with any stub, stopper or cap.

Sell or Sale means any of the following: To exchange, barter or traffic in; to solicit or receive an order for except through a licensee licensed under this Article or Article 4 or 5 of Title 44, C.R.S.; to keep or expose for sale; to serve with meals; to deliver for value or in any way other than gratuitously; to peddle or to possess with intent to sell; to possess or transport in contravention of this Article; to traffic in for any consideration promised or obtained, directly or indirectly.

Sell at wholesale means selling to any other than the intended consumer of fermented malt beverages or malt, vinous or spirituous liquors. Sell at wholesale shall not be construed to prevent a brewhouse or wholesale beer dealer from selling fermented malt beverages or malt, vinous or spirituous liquors to the intended consumer thereof or to prevent a licensed manufacturer or importer from selling such beverages to a licensed wholesaler.

Spiritous liquors means any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin and every liquid or solid, patented or not, containing at least one-half of one percent (½%) alcohol by volume and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor, except as provided in Paragraphs (23) and (44) of this Section, shall not be construed to be fermented malt or malt or vinous liquor but shall be construed to be spirituous liquor.

State licensing authority means the executive director of the department of revenue or the deputy director of the department of revenue if the executive director so designates.

Tavern means an establishment serving malt, vinous and spirituous liquors in which the principal business is the sale of such beverages at retail for consumption on the premises and where sandwiches and light snacks are available for consumption on the premises.

Vinous liquors means wine and fortified wines that contain not less than one-half of one percent (½%) and not more than twenty-one percent (21%) alcohol by volume and shall be construed to mean an alcoholic beverage obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar.

Winery means any establishment where vinous liquors are manufactured. (Ord. 91-13 §1; Ord. 94-1 §1; Ord. 98-11 §1; Ord. 2000-4 §1; Ord. 2003-03 §1; Ord. 2015-6, §12; Ord. 2016-28 §§ 2, 3; Ord. 2018-20 §1; Ord. 2019-7 §3)
Sec. 6-52. Persons prohibited as licensees.

(a) No license provided by this Article shall be issued to or held by:

(1) Any person until the annual occupational tax has been paid;

(2) Any person who is not of good moral character;

(3) Any corporation, any of whose officers, directors or stockholders holding ten percent (10%) or more of the outstanding and issued capital stock of the corporation are not of good moral character;

(4) Any partnership, association or company, any of whose officers, or any of whose members holding ten percent (10%) or more interest, are not of good moral character;

(5) Any person employing, assisted by or financed in whole or in part by any other person who is not of good character and reputation satisfactory to the City Council;

(6) Any sheriff, deputy sheriff, police officer, prosecuting officer, the state licensing authority or any of its inspectors or employees;

(7) Any person whose character, record and reputation is not satisfactory to the City Council; and

(8) Any natural person under twenty-one (21) years of age.

(b) (1) In making a determination as to character or when considering the conviction of a crime, the local licensing authority shall be governed by the provisions of Section 24-5-101, C.R.S.

(2) With respect to club license applications by corporation only, an investigation of the character of the corporate president and the club manager shall be deemed sufficient to determine whether to issue the club license to the corporation.

(c) (1) In investigating the qualifications of the applicant or a licensee, the local licensing authority may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the local licensing authority takes into consideration information concerning the applicant's criminal history record, the local licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.

(2) As used in Paragraph (1) of this Subsection, criminal justice agency means any federal, state or municipal court or any governmental agency or subunit of such agency that performs the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice. (Ord. 91-13 §1; Ord. 94-1 §1; Ord. 98-11 §2; Ord. 2000-4 §2; Ord. 2015-6, §13)

Sec. 6-53. Separate license for each business.

Each license issued under this Article is separate and distinct, and no person shall exercise any of the privileges granted under any license other than that which he or she holds. A separate license shall be issued for each specific business and each location, and in such license the particular liquors which the applicant is authorized to manufacture or sell shall be named and described. (Ord. 91-13 §1)
Sec. 6-54. Reserved.

Sec. 6-55. Sale of all or part of business interest.

(a) Whenever any individual, corporation or partnership existing or licensed under this Article sells all or part of its corporate stock, partnership interest or business interest in a beer or liquor outlet and a new license application is required by the State, an application fee pursuant to a separate resolution setting the City of Black Hawk Fee Schedule shall be paid to the City at the time of making the application.

(b) The City Clerk shall follow the procedures in this Article for the investigation of the applicant, and shall determine whether the investigation reveals any information tending to establish that the applicant may be prohibited from holding a license pursuant to Section 6-52. If the investigation reveals no information tending to establish that the applicant may be prohibited from holding a license, the City Clerk shall issue a license to the applicant; provided, however, that if the investigation reveals any information tending to establish that the applicant may be prohibited from holding a license, the City Clerk shall cause the new application for the existing outlet to be placed on the agenda not less than four (4) days nor more than thirty (30) days after the City Clerk has received the application. The applicant, or his or her attorney, shall be in attendance at the City Council meeting at which his or her application is presented. The date of presentation of the application to the City Council shall be deemed the date of filing the application. Upon receipt of the application, the City Council shall follow procedures set forth in this Article for the conduct of a public hearing. The City Council shall only consider the criteria listed in Section 6-52 when conducting the hearing.

(c) The City Clerk shall have the authority to issue a temporary permit to any applicant under this Section who has also satisfied the applicable provisions of Section 12-47-303, C.R.S., and the provision of such statute shall apply to both the issuance and administration of such a temporary permit. Except that no temporary permit shall be issued to a liquor-licensed drugstore that has acquired ownership of licensed retail liquor stores in accordance with Section 12-47-408(1)(b), C.R.S. The City Clerk shall not charge a fee for a temporary permit if the application for the temporary permit is filed with the City Clerk at the same time as the application to transfer ownership of a license. Otherwise, the City Clerk shall charge a fee pursuant to the fee schedule as determined by the Colorado Department of Revenue for a temporary permit. (Ord. 91-13 §1; 92-43 §1; 93-15 §2; Ord. 98-11 §3; Ord. 2015-6, §14; Ord. 2016-28 §4)

Sec. 6-56. Change of corporate officers or directors.

(a) Whenever any corporation causes a change in its corporate officers or directors, and a license addendum is required to be filed with the State, an application fee pursuant to a separate resolution setting the City of Black Hawk Fee Schedule shall be paid to the City at the time of filing the addendum with the City.

(b) Upon the filing of a license addendum, the procedures set forth in Section 6-55(b) of this Article shall be followed. (Ord. 91-13 §1; Ord. 98-11 §4; Ord. 2015-6, §15)

Sec. 6-57. Renewal fee and procedures.

(a) All renewal applications for malt, vinous and spirituous liquor licenses and fermented malt beverage licenses shall be submitted to the City Clerk on the prescribed forms, together with the applicable license fee, in accordance with the fee schedule as determined by the Colorado Department of Revenue, no later than forty-five (45) days prior to the date on which the license expires. No renewal application shall be accepted by the City Clerk which is not complete in every detail.
(b) Upon receiving the completed renewal application, the City Clerk shall assemble the file of the applicant and review the file to determine whether "good cause" is present for nonrenewal. Whether "good cause" is present is a fact specific inquiry depending on the circumstances of the case, and may be based on evidence that continuation of the license would be contrary to the public interest, as well as the conduct of the licensee. If the City Clerk's review indicates no facts or circumstances supporting "good cause" for nonrenewal, the City Clerk shall issue a renewal license; provided, however, that in the event the renewal application is made by a financial institution which came into possession of the license by virtue of a deed in lieu of foreclosure, a hearing must be held before the City Council.

(c) If there is information before the City Clerk tending to constitute good cause for not renewing a particular license for an additional year, the City Clerk, at the direction of the City Council, shall cause to be issued a notice of hearing on the license renewal. In the event the City Clerk issues a notice requiring a hearing to renew a license, the notice shall be served at least thirty (30) days prior to the expiration date on the license and a notice of the hearing shall be conspicuously posted on the premises at least ten (10) days prior to hearing.

(d) Hearings held on any renewal application, after proper notice has been given, may result in denial of renewal of the license for good cause.

(e) In the event that a license is renewed by the licensing authority, such renewal will not affect a pending show cause order which relates to an incident that occurred prior to the date of the renewal. The licensing authority shall be authorized to take whatever action is necessary against a licensee either in the form of suspension or revocation of the liquor license regardless of when such license has been renewed.

Sec. 6-58. Application.

(a) The local licensing authority may issue only the following malt, vinous and spirituous liquor licenses upon payment of the fee specified in Section 6-72 and Section 44-3-505, C.R.S.

1. Retail liquor store license;
2. Liquor-licensed drugstore license;
3. Beer and wine license;
4. Hotel and restaurant license;
5. Tavern license;
6. Beer pub license;
7. Club license;
8. Arts license;
9. Racetrack license;
10. Optional premises license;
11. Retail gaming tavern license; and
12. Lodging and entertainment facility license.

(b) An application for a new liquor license shall be filed with the City Clerk. It shall be filed in duplicate on forms made available by the state liquor licensing authority. It shall be accompanied by the following:

1. The application fee for the license specified in Section 6-60 below;
2. Three (3) letters of character references;
3. Reserved;
(4) In the case of existing buildings, a plan of the interior of the building; in the case of buildings not yet built, architectural plans and specifications for the building;

(5) Some evidence of ownership or right to possession of the premises, consisting of a copy of a deed or lease;

(6) In the case of a partnership, except between husband and wife, a certified copy of the partnership agreement and a statement showing the financial and management interests of each partner, along with their name and residence address and telephone number; and

(7) In the case of a corporation, a copy of its articles of incorporation, and if a foreign corporation, evidence of qualification to do business in this State, and a sworn statement setting forth the name, residence address and telephone number of each stockholder, director and officer of the corporation. (Ord. 91-13 §1; Ord. 2000-4 §4; Ord. 2016-28 §5; Ord. 2018-20 §2; Ord. 2019-7 §4)

Sec. 6-59. Optional premises license.

The requirements for an optional premises license shall be:

(1) An applicant or holder of a hotel and restaurant license desiring to sell or serve alcoholic beverages on an optional premises shall:

a. Provide a scale drawing showing the area to be licensed.

b. Show on the scale drawing the location at which alcoholic beverages are to be dispersed, and significant land or architectural factors.

c. An affidavit of the owner or the agent and manager of the facility showing the need, convenience or desirability of the optional premises license.

(2) An applicant for a hotel and restaurant license who desires to sell or serve alcohol beverages on optional premises shall file with the optional premises permit application a list of the optional premises locations. Such application and list shall be filed with the state and local licensing authorities upon initial application, and each license year thereafter. Approval of the areas must be obtained from the state licensing authority and the local licensing authority. The decision of each authority shall be discretionary. In the event that the state and local licensing authorities allow the area or areas to be designated optional premises, no alcohol beverages may be served on the optional premises without the licensee having provided written notice to the state and local licensing authorities forty-eight (48) hours prior to serving alcohol beverages on the optional premises. Such notice shall contain the specific days and hours on which the optional premises are to be used. This Subsection shall not be construed to permit the violation of any other provision of this Article under circumstances not specified in this Subsection.

(3) An applicant for an optional premises license who desires to sell, dispense or serve alcohol beverages on optional premises shall file with the optional premises license application a list of the optional premises locations and the area in which the applicant desires to store malt, vinous and spirituous liquors for future use on the optional premises. The application and additional information shall be filed with the state and local licensing authorities upon initial application, and each license year thereafter. Approval of the license and areas must be obtained from the state licensing authority and the local licensing authority. The decision of each authority shall be discretionary. In the event that the state and local licensing authorities allow the area or areas to be designated optional premises, no alcohol beverages may be served on the optional
premises without the licensee having provided written notice to the state and local licensing authorities forty-eight (48) hours prior to serving alcohol beverages on the optional premises. Such notice shall contain the specific days and hours on which the optional premises are to be used. This Subsection shall not be construed to permit the violation of any other provision of this Article under circumstances not specified in this Subsection.

(4) After all information pertinent to the application has been provided, the City Council's decision shall be made by resolution within thirty (30) days. No public hearing shall be required unless the City Council, in its discretion, determines that a public hearing is necessary. (Ord. 91-13 §1; Ord. 2000-4 §5; Ord. 2015-6, §17)

Sec. 6-60. Application fee.

An application fee in accordance with the fee schedule as determined by the Colorado Department of Revenue shall be made to the City at the time of making an application for a liquor license, or renewal. This fee shall be used by the City to defray the expenses incurred by the City in investigating the applicant and conducting the hearing. No part of this fee shall be refundable to the applicant for any reason. This fee shall be in addition to the license fees set forth in Section 6-72 of this Article. (Ord. 91-13 §1; Ord. 98-11 §5; Ord. 2000-4 §6; Ord. 2015-6, §18)

Sec. 6-61. Initial appearance before the City Council; setting public hearing.

(a) The City Clerk shall place on the agenda of a City Council meeting the request for a new liquor license. The meeting shall be held not less than four (4) days nor more than thirty (30) days after the City Clerk has received the application. The date the completed application is received by the City Clerk shall be deemed the date of filing of the application.

(b) The City Council shall set the boundaries of the neighborhood and shall set a date for public hearing. The public hearing shall be held not less than thirty (30) days from the date of the City Council meeting in which the application was presented. (Ord. 91-13 §1; Ord. 94-1 §1; Ord. 2015-6, §19)

Sec. 6-62. Public notice.

The applicant for a liquor license shall cause to be posted and published, not less than ten (10) days prior to the public hearing, a public notice of the hearing:

(1) The sign used for posting such notice shall be of suitable material, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters not less than one (1) inch in height and stating the type of license applied for, the date of the application, the date of hearing, the name and address of the applicant and such other information as may be required to fully apprise the public of the nature of the application. If the applicant is a corporation, association or other organization, the sign shall contain the names and addresses of the president, vice-president, secretary and manager or other managing officers.

(2) The published notice shall contain the same information as that required for signs, and shall be composed of eight-point boldface type set so as to be not less than one (1) column in width nor less than six (6) inches in length.

(3) If the building in which liquor is to be sold is in existence at the time of the application for the license, the sign shall be placed on the premises so as to be conspicuous and plainly visible to the general public from the exterior of the building. If the building is not in existence at the time of the application, the sign shall be posted upon the premises where the building is to be constructed in such a manner that it shall be
Sec. 6-63. Investigation of applicant.

The rules of procedure to be followed in conducting the public hearing for the liquor license application shall be established by the Mayor. (Ord. 91-13 §1)

Sec. 6-64. Consideration of factors.

Before entering any decision approving or disapproving the liquor license application, the City Council shall consider the following:

(1) The facts and evidence of the investigation;

(2) The reasonable requirements of the neighborhood for the type of liquor license for which application has been made, including reference to the number, type and availability of liquor outlets in or near the neighborhood under consideration;

(3) The desires of the adult inhabitants of the neighborhood as evidenced by petitions, remonstrances or otherwise;

(4) The use of additional law enforcement resources; and

(5) Other pertinent facts and evidence affecting the qualifications of the applicant. (Ord. 91-13 §1; Ord. 2000-4 §7; Ord. 2015-6, §21)

Sec. 6-65. Decision of the City Council.

The decision of the City Council approving or denying the application for a liquor license shall be in writing stating the reasons and shall be issued within thirty (30) days after the date of the public hearing. A copy of the decision shall be sent by mail to the applicant at the address shown in the application. (Ord. 91-13 §1; Ord. 2015-6, §22)

Sec. 6-66. Business premises prerequisite.

In the case of buildings not yet in existence, where the City Council votes in favor of the issuance of a liquor license, the license shall not be issued until the building in which the business is to be conducted is ready for occupancy, and then only after inspection of the premises has been made to determine that the applicant has substantially complied with the architect's drawings and plans and specifications submitted for such license. (Ord. 91-13 §1; Ord. 2015-6, §23)

Sec. 6-67. Distance from schools.

(a) No liquor license provided for by this Article shall be issued to or held by any person who will operate any place where liquor is sold or is to be sold by the drink within five hundred (500) feet from any public or parochial school or the principal campus of any college, university or seminary.

(b) Subsection (a) does not apply to:

(1) Any hotel, club or restaurant located within such limit on April 12, 1935;

(2) The renewal or reissuance of any license once granted;

(3) Any licensed premises located or to be located on land owned by a municipality;

(4) A liquor license in effect and actively doing business before the principal campus was constructed;

(5) Any club located within the principal campus of any college, university or seminary, as defined in Section 44-3-103, C.R.S., which limits its membership to the faculty or staff of such institution; or
(6) The conversion of a tavern license to a lodging and entertainment facility license or to another license granted under the provisions of this Article, if any, for which the person qualifies. (Ord. 91-13 §1; Ord. 2016-28 §6; Ord. 2018-20 §3)

Sec. 6-68. Transfer.

No liquor license granted under the provisions of this Article shall be transferable, except as provided by Article 3 of Title 44 of the Colorado Revised Statutes and in Section 6-55 of this Article. When a license has been issued to a husband and wife, or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to the survivors for the balance of the license. (Ord. 91-13, §1; Ord. 92-43 §2; Ord. 2016-28 §7; Ord. 2018-20 §4)

Sec. 6-69. Change of location.

If the holder of an existing liquor license changes location, then all of the procedures outlined in this Article shall apply. (Ord. 91-13 §1)

Sec. 6-70. Rehearing limitation.

No application for the issuance of a liquor license shall be considered by the City Council if an application for a similar type of license has been denied for the same location within the two (2) years immediately preceding the date of the new application. (Ord. 91-13 §1; Ord. 2015-6, §24)

Sec. 6-71. Penalty for violation.

(a) Any licensee who violates the terms of this Article may be subject to suspension or revocation of his or her license pursuant to Section 44-3-601, C.R.S.

(b) Whenever the City Council's decision to suspend a license becomes final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension, petition for permission to pay a fine in lieu of the license or permit suspension for all or part of the suspension period. Upon the receipt of the petition, the Authority may, in its sole discretion, stay the proposed suspension and cause any investigation to be made that it deems desirable and may, in its sole discretion, grant the petition if it is satisfied:

(1) That the public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes; and

(2) That the books and records of the licensee are kept in such a manner that the loss of sales of alcohol beverages that the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy.

(c) Payment of any fine shall be in the form of cash, a certified check or a cashier's check payable to the City. Such fine shall be paid into the general fund of the City.

(d) The City Council may grant such conditional or temporary stays as are necessary for it to complete its investigations, to make its findings as specified in Subsection (b) of this Section, and to grant a permanent stay of the entire or part of the suspension. If no permanent stay is granted, the suspension shall go into effect on the operative date finally set by the City Council. (Ord. 91-13 §1; Ord. 98-11 §6; Ord. 2015-6, §25; Ord. 2018-20 §5)

Sec. 6-72. License and application fees.

(a) The license fees in the appropriate amount in accordance with the fee schedule as determined by the Colorado Department of Revenue shall be paid to the City Clerk at the time of application submittal.
(b) No rebate shall be paid by the City of any alcoholic beverage license fee paid for any such license issued by it except upon affirmative action by the local licensing authority rebating a proportionate amount of such license fee.

(c) Each application for a license provided for in this Section filed with the local licensing authority shall be accompanied by an application fee in accordance with the fee schedule as determined by the Colorado Department of Revenue to cover actual and necessary expenses.

(d) The local licensing authority will charge applicants according to the City of Black Hawk Fee Schedule for the cost of each fingerprint analysis and background investigation undertaken to qualify new officers, directors, stockholders, members or managers pursuant to the requirements of Section 44-3-307, C.R.S.; however, the local licensing authority shall not collect such a fee if the applicant has already been approved by the State licensing authority with an approved master file. (Ord. 98-11 §7; Ord. 2000-4 §8; Ord. 2003-03 §2; Ord. 2015-6, §26; Ord. 2018-20 §6)

Sec. 6-73. Administrative approval.

(a) In addition to the authority vested in the City Clerk pursuant to Sections 6-55, 6-56 and 6-57 of this Article, the City Clerk is authorized to administratively approve the following:

(1) Registration of managers;

(2) Alteration of licensed premises that do not materially alter the premises or expand the premises to an outside area;

(3) Change of trade name; and

(4) Change of corporate structure.

(b) The City Clerk shall have the discretion to determine, based on the City Clerk’s investigation, to cause a request for approval under this Section to be placed on the agenda of the City Council for the City Council’s determination. (Ord. 2003-03 §3; Ord. 2015-6, §27)

Sec. 6-74. Special events liquor permits.

(a) Pursuant to Section 44-5-107(5)(a), C.R.S., the City Council, acting as the Local Licensing Authority ("Authority"), elects not to notify the State licensing authority to obtain the State licensing authority's approval or disapproval of applications for special events.

(b) The City Clerk shall report to the Colorado Liquor Enforcement Division, within ten (10) days after the Authority issues a special event liquor permit, the name of the organization to which the permit was issued, the address of the permitted location and the permitted dates of alcohol beverage service.

(c) Upon receipt of an application for a special event permit, the City Clerk shall, as required by Section 44-5-107(5)(c), C.R.S., access information made available on the State licensing authority's web site to determine the State-wide permitted activity of the organization applying for the permit. The Authority shall consider compliance with the provisions of Section 44-5-107(3), C.R.S., which restricts the number of permits issued to an organization within a calendar year to fifteen (15), before approving any application.

(d) A special event liquor permit may be issued only upon a satisfactory showing by an organization or a qualified political candidate that:

(1) Other existing facilities are not available or are inadequate for the needs of the organization or political candidate that:

(2) Existing licensed facilities are inadequate for the purposes of serving members or guests of the organization or political
candidate and that additional facilities are necessary by reason of the nature of the special event being scheduled; or

(3) The organization or political candidate is temporarily occupying premises other than the regular premises of such organization or candidate during special events such as civic celebrations or county fairs and members of the general public will be served during such special events.

(e) Each application for a special event liquor permit shall be accompanied by a permit fee in accordance with the fee schedule as determined by the Colorado Department of Revenue. (Ord. 2011-10 §1; Ord. 2015-6, §28; Ord. 2018-20 §7)

Secs. 6-75—6-90. Reserved.

ARTICLE III
Fermented Malt Beverage Licenses*

Sec. 6-91. Application required; filing.

(a) An application for a fermented malt beverage license shall be required for the following:

(1) Sales for consumption off the premises of the licensee; and

(2) Sales for consumption on the premises of the licensee.

(b) All new applications for fermented malt beverage licenses shall be filed, in duplicate on forms made available by the office of the Secretary of State, with the City Clerk and shall be accompanied by the following:

(1) Three (3) letters of character reference;

(2) In the case of a partnership, except between husband and wife, a certified copy of the partnership agreement and a statement showing the financial and management interests of each partner along with his or her name, residence address and telephone number;

(3) In the case of a corporation, a copy of its articles of incorporation, and if a foreign corporation, evidence of qualification to do business in this state, and a sworn statement setting forth the names, residence addresses and telephone numbers of each stockholder, director and officer of the corporation; and

(4) In the case of existing buildings, a plan of the interior of the building; in the case of buildings not yet built, architectural plans and specifications for the building. (Ord. 91-13 §1; Ord. 2019-7 §5)

Sec. 6-92. Fee.

An application fee and a license or renewal fee, in accordance with the fee schedule as determined by the Colorado Department of Revenue, shall be made to the City at the time of making an application for a fermented malt beverage license. This fee shall be used by the City to defray the expenses incurred by the City in investigating the applicant and conducting the hearing. No part of this fee shall be refundable to the applicant for any reason. (Ord. 91-13 §1; Ord. 98-11 §8; Ord. 2000-4 §9; Ord. 2015-6, §29; Ord. 2019-7 §6)

Sec. 6-93. Initial appearance before City Council; setting public hearing.

(a) The City Clerk shall place on the agenda of a City Council meeting the request for a fermented malt beverage license. The meeting shall be held not less than four (4) days nor more than thirty (30) days after the City Clerk has received the completed application.

*Editor’s note: Ord. 2019-7, §2 amended Article III title to read as herein set out. Formerly such article pertained to 3.2 Beer Licenses.
(b) The City Council shall set the boundaries of the neighborhood and shall set a date for public hearing. The public hearing shall be held not less than thirty (30) days from the date of the City Council meeting in which the application was presented. (Ord. 91-13 §1; Ord. 94-1 §1; Ord. 2015-6, §30; Ord. 2019-7 §7)

Sec. 6-94. Public notice.

(a) The applicant for a fermented malt beverage license shall cause to be posted and published a public notice of hearing not less than ten (10) days prior to the public hearing. The sign used for posting such notice shall be of cardboard material, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters not less than one (1) inch in height and stating the type of license applied for, the date of the application, the date of hearing, the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application. If the applicant is a partnership, the sign shall contain the names and addresses of all partners. If the applicant is a corporation, association or other organization, the sign shall contain the names and addresses of the president, vice-president, secretary and manager or other managing officers.

(b) The published notice shall contain the same information as that required for signs, and shall be composed of eight-point boldface type set so as to be not less than one (1) column in width nor less than six (6) inches in length.

(c) Where the building in which the fermented malt beverage is to be sold is in existence at the time of the application for the license therefore, the sign shall be placed on the premises so as to be conspicuous and plainly visible to the general public. (Ord. 91-13 §1; Ord. 2015-6, §31; Ord. 2019-7 §8)

Sec. 6-95. Investigation of applicant.

(a) The City Clerk shall make an investigation of the applicant for a fermented malt beverage license, and, in the case of a corporation, the board of directors of the applicant, and, in the case of a partnership, the partners of the applicant. Such investigation shall include fingerprinting and the obtaining from the Colorado Bureau of Investigation a report on the applicant.

(b) Not less than five (5) days prior to the date of the hearing on an application under this Article, the written report of the findings based on the investigation by the City Clerk shall be made available to the applicant and other interested parties. (Ord. 91-13 §1; Ord. 2015-6, §32; Ord. 2019-7 §9)

Sec. 6-96. Procedure at hearing.

The rules of procedure to be followed in the conducting of the public hearing upon an application for a fermented malt beverage license shall be established by the Mayor. (Ord. 91-13 §1; Ord. 2019-7 §10)

Sec. 6-97. Considerations for approving or denying application.

Before entering any decision to approve or deny the application for a fermented malt beverage beer license, the City Council shall consider the following:

1. The desires of the adult inhabitants of the neighborhood as evidenced by petitions, remonstrances or otherwise;

2. The reasonable requirements of the neighborhood;
(3) The character and reputation of the applicant; and

(4) Other pertinent facts and evidence affecting the qualification of the applicant. (Ord. 91-13 §1; Ord. 2015-6, §33; Ord. 2019-7 §11)

Sec. 6-98. Approval or disapproval.

The decision of the City Council approving or denying the application for a fermented malt beverage license shall be in writing stating the reasons and shall be issued within thirty (30) days after the date of the public hearing on the application. A copy of such decision shall be sent by mail to the applicant at the address shown in the application. (Ord. 91-13 §1; Ord. 2015-6, §34; Ord. 2019-7 §12)

Sec. 6-99. Issuance of license when building not yet constructed.

In the case of buildings not yet in existence, where the City Council votes in favor of the issuance of a fermented malt beverage license, the license shall not be issued until the building in which the business is to be conducted is ready for occupancy, and then only after inspection of the premises has been made to determine that the applicant has substantially complied with the architect's drawings and specifications submitted with the application for such license. (Ord. 91-13 §1; Ord. 2015-6, §35; Ord. 2019-7 §13)

Sec. 6-100. Change of location.

All procedures outlined in this Article shall be applicable to a change of location of an existing fermented malt beverage license. (Ord. 91-13 §1; Ord. 2019-7 §14)

Sec. 6-101. Rehearing limitation.

No application for the issuance of a fermented malt beverage license shall be considered by the City Council if an application for a similar type of license has been denied for the same location within the two (2) years immediately preceding the date of such new application. (Ord. 91-13 §1; Ord. 2015-6, §36; Ord. 2019-7 §15)

Sec. 6-102. Judicial review.

Any person applying to the courts for a review of any licensing authority's decision shall apply for review within thirty (30) days after the date of decision and shall be required to pay the cost of preparing a transcript of proceedings before the licensing authority when such a transcript is furnished by the licensing authority pursuant to court order. (Ord. 91-13 §1)

Sec. 6-103. Administrative approval.

The administrative actions authorized in Section 6-73 of this Chapter are also applicable to this Article. (Ord. 2003-03 §4)

Secs. 6-104—6-120. Reserved.

ARTICLE IV

Alcoholic Beverages and Fermented Malt Beverage Regulations*

Sec. 6-121. Conduct on premises.

(a) Each licensee shall conduct his or her establishment in a decent, orderly and respectable manner, and shall not permit within or upon the licensed premises the loitering of habitual drunkards or intoxicated persons, lewd or indecent displays, profanity, rowdiness, undue noise or other disturbance or activity offensive to the senses of the average citizen, or to the residents of the neighborhood in which the establishment is located.

*Editor's note: Ord. 2019-7, §16 amended Article IV title to read as herein set out. Formerly such article pertained to Alcoholic Beverages and 3.2 Beer Regulations.
(b) Any licensee shall immediately report to the Police Department any unlawful or disorderly act, conduct or disturbance committed on the premises. (Ord. 91-13 §1; Ord. 94-1 §1; Ord. 2006-20 §1)

Sec. 6-122. When consumption on premises prohibited.

No licensee shall permit the consumption of malt, vinous or spirituous beverages or fermented malt beverages on the licensed premises at any time when the sale of such beverages is prohibited by law. (Ord. 91-13 §1; Ord. 2019-7 §17)

Sec. 6-123. Soliciting drinks.

No licensee, manager or agent shall employ or permit upon any liquor licensed on-sale premises any employee, waiter, waitress, entertainer, host or hostess to mingle with patrons and personally beg, procure or solicit the purchase or sale of drinks or beverages for the use of the one begging, procuring or soliciting or for the use of any other employee. (Ord. 91-13 §1)

Sec. 6-124. Loitering.

No licensee, manager or agent shall permit upon any premises licensed under this Article for on-premises consumption any person to loiter in or about the premises for the purpose of begging and soliciting any patron or customer of, or visitor in, such premises to purchase any drinks or beverages of any type or nature, for the one soliciting or begging. (Ord. 91-13 §1)

Sec. 6-125. Nudity on premises.

No licensee for retail sale by the drink or spirituous, vinous or malt beverages or fermented malt beverages shall permit any person to appear in a state of nudity within or upon the premises. (Ord. 91-13 §1; Ord. 2019-7 §18)

Sec. 6-126. Indecent displays.

No licensee for retail sale by the drink of spirituous, vinous or malt beverages or fermented malt beverages shall permit any lewd or indecent display by any person within or upon the premises. (Ord. 91-13 §1; Ord. 2019-7 §19)

Sec. 6-127. Showing of films, etc., depicting acts prohibited.

No licensee for retail sale by the drink of spirituous, vinous or malt beverages or fermented malt beverages shall permit the showing of films, still pictures, electronic reproduction or other visual reproductions depicting any act or live performance prohibited by this Article. (Ord. 91-13 §1; Ord. 2019-7 §20)

Sec. 6-128. Promotion of free or discounted beverages; malt beverages.

It is unlawful for any person licensed to sell fermented malt beverage for consumption on the premises within the City to permit or have occur on the premises between the hours of 11:00 a.m. and 11:00 p.m. any of the following:

(1) To offer or deliver any free fermented malt beverages to any person on licensed premises, except at private functions not open to the public;

(2) To deliver more than two (2) individual servings of fermented malt beverage to any one (1) person at one (1) time;

(3) To sell, offer to sell, or deliver to any person any fermented malt beverage at any time during the calendar week at a price less than the price regularly charged during such week for such beverage by such licensee, except at private functions not open to the public;

(4) To sell, offer to sell, or deliver to any person an unlimited amount of fermented malt beverage during a fixed time for a fixed price, except at private functions not open to the public; or
(5) To conduct or permit any game or contest on licensed premises which involves drinking fermented malt beverage or the award of fermented malt beverage as a prize.

(Ord. 91-13 §1)

Sec. 6-129. Promotion of free or discounted beverages; alcoholic beverages generally.

It is unlawful for any person licensed to sell malt, vinous or spirituous liquors for consumption on the premises within the City to permit or have occur on the premises between the hours of 11:00 a.m. and 11:00 p.m. any of the following:

1. To offer or deliver any free liquor to any person on licensed premises, except at private functions not open to the public;

2. To deliver more than two (2) individual servings of liquor to any one (1) person at one (1) time;

3. To sell, offer to sell, or deliver to any person any liquor at any time during the calendar week at a price less than the price regularly charged during such week for such beverage by such licensee, except at private functions not open to the public;

4. To sell, offer to sell, or deliver to any person an unlimited amount of liquor during a fixed time for a fixed price, except at private functions not open to the public;

5. To conduct or permit any game or contest on licensed premises which involves drinking liquor or the award of liquor as a prize; or

6. To increase the amount of liquor contained in an individual serving of liquor without increasing proportionally the price charged for such serving. (Ord. 91-13 §1)

Sec. 6-130. Penalties.

Failure to comply with the terms of this Article shall constitute a criminal offense. Any person who is found guilty of, or pleads guilty or nolo contendere to the violation of, the criminal offense shall be subject to a criminal penalty as set forth in Section 1-73 of this Code.

(Ord. 91-13 §1; Ord. 94-1 §1)

Secs. 6-131—6-170. Reserved.

ARTICLE V

Carrying of Weapons by Security Guards

Sec. 6-171. Definitions.

Public place means any place commonly or usually open to the general public or to which members of the general public may resort, or which is accessible to members of the general public. By way of illustration, such public places include, but are not limited to, public ways, streets, buildings, sidewalks, alleys, parking lots, shopping centers, gambling establishments, casinos, restaurants, hotels, motels, liquor establishments and places of business usually open to the general public. (Ord. 92-4 §1)

Sec. 6-172. Regulation of business.

(a) Every casino or gaming establishment that hires, retains independent contractors, or employs a guard, armored car guard, watchman, security guard or merchant guard shall ensure that the employee does not carry a weapon, concealed or otherwise, in the public places of the casino or gaming establishment. This restriction applies regardless of whether the guard, armored car guard, watchman, security guard or merchant guard has been issued a valid concealed weapons permit from the chief of police of a city or the sheriff of a county.

(b) Every business, company or partnership that is in the business of contracting the services of guards, armored car guards, watch-
men, security guards or merchant guards to
third parties shall ensure that the guards, ar-
mored car guards, watchmen, security guards
or merchant guards do not carry a weapon,
concealed or otherwise, in the public places of
the casino or gaming establishment. This restric-
tion applies regardless of whether the guard,
armored car guard, watchman, security guard
or merchant guard has been issued a valid con-
cealed weapons permit from the chief of police
of a city or the sheriff of a county.

(c) Subsections (a) and (b) above shall not
apply if the guard, armored car guard, watch-
man, security guard or merchant guard is in the
process of transporting or carrying money to
an armored car, a financial institution or a vault
and is registered with the Police Department to
undertake these duties.

(d) Subsections (a) and (b) above shall not
apply while the guard, armored car guard, watch-
man, security guard or merchant guard is in the
private areas of the casino or gaming establish-
ment.

(e) A guard, armored car guard, watchman,
security guard or merchant guard who is off
duty from the casino or gaming establishment
and has a valid concealed weapons permit may
carry a concealed weapon in the public areas of
the casino or gaming establishment. (Ord. 92-4
§1, 94-1 §1)

Sec. 6-173. Penalty.

(a) Failure of a business to comply with the
terms of this Article shall be grounds to sus-
pend or revoke its business license.
Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. For each day, or portion thereof, during which any violation continues, a person may be cited for a separate civil infraction. (Ord. 94-1 §1)

Secs. 6-174—6-190. Reserved.

ARTICLE VI

Regulation of Security Officers

Sec. 6-191. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicated a different meaning:

Security officer shall mean an individual who is employed for the purpose of watching, guarding or otherwise protecting the persons and/or property of an employer, or to preserve the peace in the conduct of that employer's business. (Ord. 2006-21 §1)

Sec. 6-192. Regulations.

All security officers shall comply with the following provisions:

(1) Badges. No badge or insignia that may be confused with a badge or insignia worn by police officers may be worn by any security officer.

(2) Uniforms and accessories. No accessory or part of a uniform that can be confused with the uniform of the Police Department may be worn by any security officer.

(3) Vehicles. The vehicle used by a security officer in the conduct of business within the City shall not exhibit colorings, markings or equipment so similar to marked patrol vehicles of the City such that it might be confused with a City police vehicle. In addition, such security officer vehicles shall not be equipped with any lights or sirens in violation of the traffic code of the City or the laws of the State, nor shall any insignia be painted on the sides which is similar to, or which could be confused with, those painted on the sides of the vehicles of the Police Department.

(4) Use of words police or officer prohibited. The words police or officer shall not be used in any advertising or upon the premises within the limits of the City occupied by a security officer, nor on any of its vehicles, equipment or wearing apparel. (Ord. 2006-21 §1)

Sec. 6-193. Prohibited conduct.

In addition to the other acts prohibited by this Article, it shall be unlawful:

(1) For any security officer to fail to turn over any person arrested by such security officer pursuant to the laws of the State immediately to the Police Department or other public law enforcement agency. Nothing contained herein shall be construed as authorizing any security officer to make an arrest of any person in violation of the laws of the State.

(2) For any security officer who fires a firearm within the City to fail to promptly report such to the Police Department or other public law enforcement agency.

(3) For any security officer to knowingly hinder or interfere with any investigation under the jurisdiction of the Police Department or other public law enforcement agency.
(4) For any security officer to fail to report immediately to the Police Department or other public law enforcement agency all violations of state or federal laws which constitute felonies, or breach of the peace, coming to his or her attention.

(5) For any security officer to fail to conduct himself or herself in a lawful manner at all times. (Ord. 2006-21 §1)

Sec. 6-194. Penalty.

Failure to comply with the terms of this Article shall be a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. For each day, or portion thereof, during which any violation continues, a person may be cited for a separate civil infraction. The penalties specified in this Section shall be cumulative and nothing shall be construed as either prohibiting or limiting the City from pursuing such other remedies or penalties, including an action at law or equity. (Ord. 2006-21 §1)

Secs. 6-195—6-220. Reserved.

ARTICLE VII

Contractors

Sec. 6-221. Definition of contractor.

(a) A contractor is any person who contracts for or erects, adds to, alters, repairs, moves or demolishes any building, structure or property, which shall include the performance of the following types of work:

(1) Erecting, adding, altering or repairing any building or structure;

(2) Demolishing any building, structure or utilities, or portion thereof;

(3) Moving all types of buildings or structures;

(4) Installing swimming pools;

(5) Installing and repairing fire-extinguishing systems of all types; installing, maintaining and repairing smoke detection systems;

(6) Installing all types of fences;

(7) Installing lawn sprinkler systems, including installing check and vacuum valves and connections to potable water supply;

(8) Fabricating, installing, erecting or maintaining all types of signs;

(9) Installing, adding, altering or repairing elevators, escalators, moving walks and dumbwaiters;

(10) Installing, repairing and replacing domestic appliances;

(11) Installing, adding, altering or repairing communication circuits, including telephone, cable, TV, computer systems or any other low voltage system connected by wire from one (1) location to another;

(12) Special: painters, carpet layers, tilers, landscapers, asphalt pavers or any other particular trade or work connected with the building industry; and

(13) Excavation, digging, burying or exhuming, upon any private or public property, including rights-of-way, within the City.

(b) This Article shall not be construed to require any person to register with the City if he or she performs work or employs another to perform work in his or her personal residence. However, this exemption shall not apply if the total cost of the work performed, including
materials and labor, exceeds three thousand dollars ($3,000.00), or if such property or residence:

(1) Is intended for sale or resale by a person engaged in the business of constructing or remodeling such facilities or structures; or

(2) Is rental property which is occupied or is to be occupied by tenants for lodging, either transient or permanent. (Ord. 91-27 §1; Ord. 96-2 §1; Ord. 2007-3 §1)

Sec. 6-222. Registration.

Any person who engages in the business of general contracting or construction work shall register with the City Clerk and obtain a business license prior to beginning any construction within the City. The contractor must also provide any bond or certificate of insurance as directed by the City Clerk prior to the commencement of any construction operations within the City. (Ord. 91-27 §1; Ord. 94-1 §1; Ord. 94-1 §1; Ord. 96-2 §2; Ord. 99-3 §1; Ord. 2005-20 §1; Ord. 2007-3 §1; Ord. 2015-6, §37)

Sec. 6-223. Application.

Every contractor shall be required to complete a registration application on an annual basis. The application shall contain the name, address and phone number of the contractor; the name, address and phone number of the insurance company and insurance agent; and the amount of bond. (Ord. 91-27 §1; Ord. 94-1 §1; Ord. 99-3 §2; Ord. 2007-3 §1)

Sec. 6-224. Penalty.

(a) Failure of a contractor to comply with the terms of this Article shall be grounds to suspend or revoke its registration or issue a cease and desist order according to Sections 6-11 through 6-14 of this Chapter.

(b) Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or no contest to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. For each day, or portion thereof, during which any violation continues, a person may be cited for a separate civil infraction.

(c) Notwithstanding the requirements of Section 6-222 above, the contractor must first obtain a utility location form from all applicable utilities, and maintain these forms in his or her possession during any construction work, prior to the commencement of any excavation operation. If utility location forms are not first obtained prior to the commencement of an excavation operation and the contractor damages any utility line, the contractor will be in violation of this Article and shall be subject to the penalty provisions set forth in Section 1-74 of this Code. (Ord. 91-27 §1; Ord. 99-3 §3; Ord. 2007-3 §1; Ord. 2015-6, §38)

Secs. 6-225—6-240. Reserved.

ARTICLE VIII

Lodging Licenses

Sec. 6-241. Definitions.

For purposes of this Article, the following terms shall have the following meanings:

Gross taxable sales means the total amount received in money, credits, property or other consideration valued in money from sales and purchases of lodging that is subject to the tax imposed in this Article.

A hotel, lodging house, bed and breakfast, rooming house or other place where transients are accommodated, within the meaning of this Article, shall be any place in which two (2) or more rooms are rented out.
Lodging means rooms or accommodations for overnight use furnished by any person to any person who pays to use, possess or occupy, or has the right to use, possess or occupy, any such room or accommodation in a lodging facility under any concession, permit, lease, contract, license to use or other similar arrangement.

Lodging facility means any hotel, bed and breakfast, apartment hotel, lodging house, motel, motor hotel, guest house, guest ranch, resort, mobile home, mobile home park, auto court, inn, trailer court, trailer park, campground or hostel where two (2) or more rooms or accommodations are used for lodging.

Person means any group or combination of individuals acting as a unit, including but not limited to family groups, communes, societies, fellowships, brotherhoods, guilds and orders.

Purchase or sale means the acquisition for a price of lodging within the City by any person.

Purchaser means any person exercising the taxable privilege of purchasing lodging.

Tax means either the tax payable by the purchaser or the aggregate amount of taxes due from a vendor during the period for which the vendor is required to report collections under this Article.

Taxpayer means any person obligated to account to the City for taxes collected or to be collected, or from whom a tax is due, under the terms of this Article.

Vendor means a person making a sale of or furnishing lodging to a purchaser in the City. (Ord. 91-14 §1; Ord. 91-15 §1; Ord. 2009-12 §1)

Sec. 6-242. Guest register required.

(a) Any person operating a lodging facility shall, at all times, keep and maintain a register of guests. The register shall contain the name and address of each guest, the proprietor or person in charge of the lodging facility, the room number assigned to each guest and the time for which the room was rented. No guest shall privately occupy a room until all information has been entered in the register.

(b) When the occupant of a room ends his or her stay, the proprietor or person in charge of the lodging facility shall enter the time of departure in the register opposite the name of the occupant.

(c) The register of a lodging facility shall at all times be made available to any police officer or public officer for inspection. (Ord. 91-15 §1; Ord. 2009-12 §1)

Sec. 6-243. License required.

It shall be unlawful to operate any lodging facility without first obtaining a license from the City. Where lodging is provided at two (2) or more separate locations by one (1) person, separate licenses for each location of business shall be required. (Ord. 91-14 §1; Ord. 91-15 §1; Ord. 94-1 §1; Ord. 2009-12 §1)

Sec. 6-244. Application.

Before any license shall be granted under this Article, an applicant must submit to the City a completed lodging license application, the annual license fee and occupational tax, as required under Article IX of Chapter 4 of this Code. Such application shall include the address of the lodging facility, the proprietor or person in charge of the lodging facility, the number of rooms contained in the lodging facility and any additional information the City deems necessary. (Ord. 91-15 §1; Ord. 2009-12 §1)
Sec. 6-245. Fees.

The annual license fees under this Article shall be set by resolution of the City Council adopting the City of Black Hawk Fee Schedule. (Ord. 91-15 §1; Ord. 2009-12 §1; Ord. 2015-6, §39)

Sec. 6-246. Enforcement.

Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who fails to comply with this Article shall be subject to the enforcement procedures outlined in Sections 6-11 through 6-15 of this Chapter, as well as the civil penalties outlined in Section 1-74 of this Code. (Ord. 94-1 §1; Ord. 2009-12 §1)

Secs. 6-247—6-290. Reserved.

ARTICLE IX
Pawnbrokers

Sec. 6-291. Definitions.

As used in this Article, the following words or phrases shall have the following meanings, respectively:

Contract for purchase means a contract entered into between a pawnbroker and a customer pursuant to which money is advanced to the customer by the pawnbroker on the delivery of tangible personal property by the customer on the condition that the customer, for a fixed price and within a fixed period of time, not to exceed ninety (90) days, has the option to cancel the contract.

Fixed price means the amount agreed upon to cancel a contract for purchase during the option period. The fixed price shall not exceed:

a. One-tenth ($\frac{1}{10}$) of the original purchase price for each month, plus the original purchase price, on amounts of fifty dollars ($50.00) or more;

b. One-fifth ($\frac{1}{5}$) of the original purchase price for each month, plus the original purchase price, on amounts of less than fifty dollars ($50.00).

Fixed time means that period of time, not to exceed ninety (90) days, as set forth in a contract for purchase, for an option to cancel the contract.

Option means the fixed time and the fixed price agreed upon by the customer and the pawnbroker in which a contract for purchase may be but does not have to be rescinded by the customer.

Pawnbroker means a person regularly engaged in the business of making contracts for purchase or purchase transactions in the course of his or her business.

Pawnbroking means the business of a pawnbroker.

Purchase transaction means the purchase by a pawnbroker in the course of his or her business of tangible personal property for resale, other than newly manufactured tangible personal property which has not previously been sold at retail, when such purchase does not constitute a contract for purchase.

Tangible personal property means all personal property other than choses in action, securities or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his or her business in connection with a contract for purchase or purchase transaction. (Ord. 91-17 §1)

Sec. 6-292. License required.

It is unlawful for any person to engage in the business of pawnbroking without first obtaining a license therefor from the City. (Ord. 91-17 §1)
Sec. 6-293. Application.

(a) Each individual applicant, partner, officer, director and holder of ten percent (10%) or more of the corporate stock of a corporate applicant, and all managers, shall be designated in each application form, and each of them shall be fingerprinted by the City Clerk.

(b) Each of such persons described in Subsection (a) above shall furnish three (3) letters of character reference from residents of the City or the surrounding area.

(c) Each individual applicant, and each partnership and corporate applicant, shall furnish as an attachment to and part of such application an executed document authorizing the City Clerk to inquire into the applicant's credit history and credit status.

(d) Each applicant shall also:

(1) Furnish a bond to the City, subject to approval by the City Manager, in the amount of fifty thousand dollars ($50,000.00), to be forfeited if the applicant fails to comply with the requirements of this Article, or to forfeit out of such bond the fair market value of customers' articles if the applicant fails to keep safely or return all such articles to the customers; and

(2) Provide fire and property damage insurance policies to the City, subject to approval by the City Manager. The insurance shall be upon the property the applicant holds in contract in the minimum amount of one-half (½) its contracted value in case of damage or destruction. (Ord. 91-17 §1; Ord. 94-1 §1; Ord. 2015-6, §40)

Sec. 6-294. Initial application fee.

Each applicant shall pay an initial application fee as set by the City of Black Hawk Fee Schedule at the time of filing an application. In the event the application is denied, the City shall retain fees to cover costs related to the investigation and processing of the application, and any remainder of the fee shall be refunded to the applicant. (Ord. 91-17 §1; Ord. 2015-6, §41)

Sec. 6-295. Investigation of applicant.

(a) Upon receipt of a properly completed application, as determined by the City Clerk, the payment of the application fee and verification of bond and insurance requirements, the City Clerk shall conduct an investigation of the background, character and financial responsibility of each individual applicant, and of the partners, officers, directors and holders of ten percent (10%) or more of the stock of a corporation, and each person named as a manager of a proposed pawnbroker's establishment. The City may issue an applicant a temporary license pending completion of the investigation.

(b) The City Clerk shall furnish the results of such investigation to the City Council. (Ord. 91-17 §1; Ord. 2015-6, §42)

Sec. 6-296. Denial of license.

(a) The application of any applicant may be denied by the City Council on grounds including, but not limited to, the following:

(1) An individual applicant, partner, officer or director of a corporation, holder of ten percent (10%) or more of the stock of a corporation, or manager of a pawnbroker's establishment, is not of such character as to reasonably assure that the operations of the pawnbroker's establishment will be conducted lawfully and in a manner which will not be detrimental to the public interest or well-being. Having been adjudged in any civil or criminal proceeding to have indulged in business or trade practices prohibited by law, or convicted of any felony or other offense involving moral turpitude and pertinent circumstances connected therewith, shall be considered in determining whether the
individual applicant, manager, partner, director or holder of ten percent (10%) or more of the applicant's stock is a person of good moral character.

(2) Failure to comply with any law, rule or regulation relating to the conduct or operation of any pawnbroker or secondhand dealer business.

(3) The suspension or revocation of any pawnbroker or secondhand dealer license.

(b) The City Council shall not deny a license to an applicant without notice to the applicant of the reasons for such denial and an opportunity for a hearing before the City Council by the applicant to respond to or defend the issues which may constitute reasons for denial of the license. (Ord. 91-17 §1; Ord. 2015-6, §43)

Sec. 6-297. Annual license fee and occupational tax.

Upon notification by the City Clerk of approval of an application, an annual business license fee and the occupational tax, pursuant to a separate resolution setting the City of Black Hawk Fee Schedule shall be paid to the City. All pawnshops licensed at the time of enactment of this Article must, as a condition of the initial renewal of such licenses following the effective date of the ordinance codified herein, fulfill all the requirements of Section 6-293 of this Article and pay actual costs for investigation and processing as set forth in Section 6-295 above. Notwithstanding the foregoing, the City may require an investigation pursuant to renewal of any license if it is determined that reasonable cause exists for such investigation to maintain the public health, safety and welfare of the community. (Ord. 91-17 §1; Ord. 2015-6, §44)

Sec. 6-298. Transferability.

Pawnbroker licenses shall not be transferable. (Ord. 91-17 §1)

Sec. 6-299. Change of address.

No person licensed under this Article shall move his or her place of business without first having notified the City Clerk, who shall include the change of address upon the license. (Ord. 91-17 §1)

Sec. 6-300. Change of managers.

In the event of a change of managers, the licensee shall disclose to the City the change in managers; and the new manager shall fulfill all the requirements of Section 6-293(a)—(c) above. Failure of a manager to meet the prescribed standards and qualifications shall constitute grounds for termination of the license. (Ord. 91-17 §1; Ord. 2015-6, §45)

Sec. 6-301. Records.

(a) Each licensee shall keep a numerical register in which shall be recorded the time and date of each purchase and contract for purchase transaction; an accurate description in English of the article, including all serial and identification numbers; the time and date of receiving such article; the name, address, date of birth, photograph and physical description of each customer, and his or her driver's license number or other identification number from such sources permitted under Section 6-302 below; and a declaration of ownership signed by the customer where there exists a contract for purchase, the register shall also contain the number of the contract, the date it is due, the length of the loan, the date notice by certified mail is sent, the date the article is sold, the amount of the sale and the name and address of the purchaser.

(b) Each licensee shall make available the records required in Subsection (a) above and the articles obtained for inspection at all reasonable times by any City official.
(c) On a weekly basis, each licensee shall provide to the City Clerk on forms provided by him or her, the following information:

1. A list of all tangible personal property accepted during the preceding week;
2. One (1) copy of the customer’s declaration of ownership; and
3. The information recorded on the pawnbroker’s register pursuant to Subsection (a) above.

(d) Each licensee shall maintain the records required by this Article for a minimum of three (3) years. (Ord. 91-17 §1)

Sec. 6-302. Acceptable identification.

No licensee, or any principal, employee, agent or servant of such licensee, shall engage in a purchase transaction or shall enter into a contract for purchase with any customer without securing one (1) of the following types of current and valid identification:

1. Colorado driver’s license;
2. Identification card issued in accordance with Section 42-2-402, C.R.S., which is an identification card issued by the State;
3. A driver’s license containing a picture issued by another state;
4. An identification card containing a picture issued by another state;
5. A military identification card;
6. A passport;
7. An alien registration card; or
8. A non-picture identification document issued by a state or federal governmental entity, if the purchaser also obtains a clear imprint of the seller’s right index finger or photo of seller at the time of the transaction. (Ord. 91-17 §1)

Sec. 6-303. Information on receipt.

At the time of receiving tangible personal property and upon the subsequent renewal of any contract of purchase, a pawnbroker shall deliver to the customer a receipt which is correspondingly serially numbered to the numerical register. The receipt shall contain the substance of the information required to be kept in the records prescribed in Section 6-302 above. (Ord. 91-17 §1)

Sec. 6-304. Maximum charges by pawnbrokers; commissions void.

(a) No pawnbroker shall request or receive any greater amount of interest, commission or compensation than the total rate or amount allowed by state statute or law. No pawnbroker may impose or collect any other charge upon the renewal of any contract for purchase or at any other time.

(b) All contracts for the payment of a commission by the borrowers for procuring a contract for purchase on tangible personal property are void. A borrower who has paid such a commission may recover in a civil action twice the amount paid plus costs and reasonable attorney’s fees. (Ord. 91-17 §1)

Sec. 6-305. Intermediate payments; receipts.

The pawnbroker shall accept intermediate payments, without penalty, upon contracts for purchase which have not matured when presented with the receipt, and shall treat the amount tendered as a payment upon the existing contract. A receipt indicating the date of the payment and the amount shall be provided for all moneys received on account of or in payment of the contract for purchase. The amount of money presented shall be applied in total against the amount of indebtedness. In no event
shall any late charges, collection fees or other such service charges be deducted from the amount of the payment tendered to the pawnbroker. (Ord. 91-17 §1)

Sec. 6-306. Holding period.

Each pawnbroker shall retain the unredeemed articles in the pawnbroker's possession on the licensed premises for not less than sixty (60) days from the date of the initial possession and control of the articles by the pawnbroker pursuant to a purchase transaction or a contract for purchase. (Ord. 91-17 §1)

Sec. 6-307. Notice to pledgor of failure to redeem and sale.

If the customer fails to redeem a contract for purchase after the maturity of the corresponding contract by repayment of the principal and all accrued interest charges, the pawnbroker shall at any time thereafter mail a notice by certified mail to the customer at the address on the receipt. The notice shall provide the number of the receipt, a description of the article, and notice that the property must be redeemed within ten (10) days from the date of the notice. (Ord. 91-17 §1)

Sec. 6-308. No offsets or deficiency permitted.

The pawnbroker shall have a claim to the article only for payment of the debt, and in no event shall the pawnbroker have a claim to the personal credit of the customer. No setoff (defined here as a deduction or counterclaim) shall be allowed the pawnbroker against a surplus or deficit arising out of another contract for purchase between the pawnbroker and the customer. In no event shall any deficiency balance (defined here as money due the pawnbroker by the customer) be collected by the pawnbroker; and in the event that such an attempt is made, the entire transaction shall be void. (Ord. 91-17 §1)

Sec. 6-309. Investigation of books.

For purposes of discovering violations of this Article, any ordinance of the City, or state or federal law, the City or its representatives may at any time investigate the business and examine the books, accounts, papers, documents and records used therein of:

1. Any pawnbroker in respect to such books, accounts, papers, documents and records required to be kept hereunder;

2. Any other person who engages in the business of a pawnbroker as defined in Section 6-291 of this Article or who participates in such business as principal, agent, broker or otherwise; and

3. Any person who a police officer has reasonable cause to believe is violating or is about to violate any provision of this Article, whether or not such person shall claim to be within the authority or beyond the scope of this Article. For the purposes of this Section, the City and its representative shall have and be given full access to the offices and places of business, books, accounts, papers, documents, records, files, safes and vaults of all such persons, and shall require the attendance of and examine any person relative to such purchase or contract for purchase transactions or such business or to the subject matter of any investigation, examination or hearing. (Ord. 91-17 §1; Ord. 94-1 §1)

Sec. 6-310. Hold order by police officer.

Any police officer may order a pawnbroker to hold any article deposited with the pawnbroker for a reasonable period of time if the police officer has a reasonable belief that the article is stolen. A pawnbroker who receives such a hold order may not sell or dispose of the article or allow it to be redeemed as long as the hold order remains in effect. (Ord. 91-17 §1; Ord. 94-1 §1)
Sec. 6-311. Unlawful transactions.

No licensee shall purchase tangible personal property or enter into contracts of purchase with the following persons:

(1) Any person under eighteen (18) years of age;

(2) Any person who the licensee knows or has reason to believe has been convicted of burglary, robbery, felony theft or theft by receiving; and

(3) Any person who appears to be under the influence of alcohol or any controlled substance, as defined in state law. (Ord. 91-17 §1)

Sec. 6-312. Hours.

It shall be unlawful for any pawnbroker to be open for business or to operate the establishment wherein the business of pawnbroking is carried on after 8:00 p.m. each day and before 8:00 a.m. the following day. (Ord. 91-17 §1)

Sec. 6-313. Accepting lost or stolen articles.

A pawnbroker who accepts any article in a purchase or contract of purchase transaction from a customer, who is not the owner, obtains no title in the article either by reason of the expiration of the contract or by transfer of the receipt to the pawnbroker by the customer or holder. Ignorance of the fact that the article was lost or stolen shall not be construed to affect the question of title. If the pawnbroker shall sell such article to a third person, the pawnbroker shall remain liable to the original owner in an action to recover the article. The lawful owner may, upon proof of his or her ownership of the article lost or stolen, claim the same from the pawnbroker or recover the same by appropriate legal means, including without limitation, forfeiture of the fair market value of such article out of the bond required by Section 6-293 of this Article. (Ord. 91-17 §1)

Sec. 6-314. Notice to Police Department of stolen items.

If any person shall attempt to establish a contract of purchase or sell to a pawnbroker items which the pawnbroker has reason to believe have been stolen, then in that event, it shall be the duty of the pawnbroker to immediately notify the Police Department and provide a description of the person making such attempts and the article that such person attempted to contract or sell. If a pawnbroker could reasonably have had knowledge that the items contracted for or sold were stolen or obtained in any other unlawful manner, then it shall be unlawful for such pawnbroker not to notify the Police Department as required herein. (Ord. 91-17 §1; Ord. 94-1 §1)

Sec. 6-315. Additional regulations.

The City shall make additional rules and regulations as are necessary and convenient for the administration and enforcement of this Article, including required forms and requirements for additional reports. (Ord. 91-17 §1)

Sec. 6-316. Enforcement.

(a) Failure of a business to comply with the terms of this Article shall be grounds to suspend or revoke its business license.

(b) Failure to comply with the terms of this Article shall be a civil infraction. The enforcement procedures and penalties outlined in Sections 6-11 through 6-15 of this Chapter shall be applicable to this Article as if set forth herein. (Ord. 94-1 §1)

Secs. 6-317—6-330. Reserved.

ARTICLE X

Special Event Permits

Sec. 6-331. Findings of fact.

(a) The City Council finds that the practice of individuals, businesses and casinos conducting special events involving musical perfor-
mannances, entertainment or various promotions outside of the licensed business premises or upon vacant property constitutes a potential public nuisance, and should be regulated. When alcoholic beverages are consumed outside of the licensed premises, the potential for liquor violations, underage consumption and civil disturbances increases.

(b) Moreover, certain restrictions need to be placed on special events conducted on streets, alleys, sidewalks or other public property in which persons sell or offer or solicit for sale goods or services. Such restrictions are necessary to maintain peace and tranquility, as well as to further the historic character of the City.

Sec. 6-332. Definitions.

The following words, when used in this Article, shall have the meanings respectively ascribed to them:

Annual program of special events means a program of special events that shall not be held for more than twelve (12) days in any calendar month. Each special event that is held during a calendar month shall not run for more than three (3) consecutive days. For example, a program of special events could be held on Friday, Saturday and Sunday for four (4) consecutive weeks during one (1) calendar month.

Applicant means any person who is applying for, but has not yet received, a special event permit pursuant to the provisions of this Article.

Musical performance means any live or recorded vocal or instrumental music.

Sale means the exchange of goods or services for money or other consideration.

Special event means any musical performance, show, patriotic display, exhibition, amusement or sale conducted outside of any premises granted a certificate of occupancy by the City, or conducted upon any vacant or public premises within the City, by an individual licensed to do business or otherwise within the City. A special event shall include any activity, performance, sale, promotion or display taking place anywhere outside the licensed premises that is intended to be undertaken on a temporary basis or a part of an annual program of special events. A special event permit is required for the extension of food service outside of any premises granted a certificate of occupancy or for the promotion or display of more than one (1) vehicle outside of any licensed premises. (Ord. 92-39 §2; Ord. 94-24 §1; Ord. 97-6 §3; Ord. 99-22 §1; Ord. 2001-15 §§6, 7; Ord. 2002-06 §1; Ord. 2012-13 §1)

Sec. 6-333. Permit required.

Any individual or entity desiring to hold a special event or an annual program of special events within the City shall obtain a special event permit from the City or an annual program of special events permit. (Ord. 92-39 §3; Ord. 99-22 §2)

Sec. 6-334. Application and fee.

Applications for a special event permit or an annual program of special events permits shall be made to the City Clerk upon forms provided by the City Clerk for that purpose. An application fee pursuant to a separate resolution setting the City of Black Hawk Fee Schedule shall be submitted at the time of application. If liquor is requested, an additional Special Event Liquor Permit will be required, see Section 6-74. The application shall include a site plan which shall show where the event will be held and specifically identify what effect, if any, the special event or the annual program of special events will have on private property. The application shall further provide the methods to be used to maintain public safety during the spe-
cial event or the annual program of special events. The City Clerk shall grant a special event or the annual program of special events permit, provided that the application form is fully completed and is in compliance with this Article and the ordinances of the City. Each separate day that a special event is conducted shall require a separate special event permit, except for the annual program of special events, and except for the promotion or display of a maximum of one (1) vehicle outside of any licensed premises, which shall be for a duration as set forth in the application, but not to exceed thirty (30) days. (Ord. 92-39 §4; Ord. 94-1 §1; Ord. 94-24 §2; Ord. 99-22 §3; Ord. 2001-15 §8; Ord. 2003-7 §1; Ord. 2015-6, §47)

Sec. 6-335. Hours permitted for special events.

No special event or annual program of special events shall be conducted prior to 8:00 a.m. or later than 10:00 p.m. on any day that the special event(s) is conducted, unless otherwise approved by the City Council. (Ord. 92-39 §5; Ord. 97-6 §4; Ord. 99-22 §4; Ord. 2001-15 §9)

Sec. 6-336. Report of disorderly conduct.

Any permittee under this Article shall immediately report to the Police Department any unlawful or disorderly act or conduct committed during the special event. (Ord. 92-39 §6)

Sec. 6-337. Consumption of alcoholic beverages.

The sale or consumption of alcoholic beverages outside of the licensed premises during any special event is generally prohibited. However, if any alcoholic beverages are to be served during a special event, the applicant shall provide proof that the appropriate licenses or approvals from the City and the State have been obtained. (Ord. 92-39 §7)

Sec. 6-338. Violations.

It is unlawful for any person to conduct a special event without first obtaining a permit from the City as provided in this Article. Any failure to comply with any conditions stated in a permit or any of the requirements of this Article shall be a violation of this Article. (Ord. 92-39 §8)

Sec. 6-339. Penalties.

Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. For each day, or portion thereof, during which any violation continues, a person may be cited for a separate civil infraction. (Ord. 94-1 §1)

Secs. 6-340—6-350. Reserved.

ARTICLE XI

Sexually Oriented Businesses

Sec. 6-351. Purpose and intent.

The purpose and intent of this Article is to regulate sexually oriented businesses to promote the health, safety, morals and general welfare of the citizens of the City, and to establish reasonable and uniform regulations. The provisions of this Article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or the State Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent or effect of this Article to condone or legitimize the
distribution of obscene material. (Ord. 94-20 §1)

Sec. 6-352. Definitions.

Words and phrases used in this Article shall have the meanings ascribed as contained in Chapter 16 of this Code and as set forth as follows:

Employee means a person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

Establishment of a sexually oriented business means and includes any of the following:

a. The opening or commencement of any such business as a new business;

b. The conversion of an existing business into a sexually oriented business;

c. The addition of a sexually oriented business to any other existing sexually oriented business; or

d. The relocation of a sexually oriented business.

Licensing Officer means the City Clerk or his or her designee.

Manager means an operator, other than a licensee, who is employed by a sexually oriented business to act as a manager or supervisor of employees or is otherwise responsible for the operation of the business.

Operator means and includes the owner, permit holder, custodian, manager, operator or person in charge of any permitted or licensed premises.

Permittee and/or licensee means a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

Person means an individual, proprietorship, partnership, corporation, limited liability company, association or other legal entity.

Premises or permitted or licensed premises means any premises that requires a license and/or permit and that is classified as a sexually oriented business.

Principal owner means any person owning, directly or beneficially:

a. Ten percent (10%) or more of a corporation's equity securities;

b. Ten percent (10%) or more of the membership interests in a limited liability company; or

c. In the case of any other legal entity, ten percent (10%) or more of the ownership interests in the entity.

Specified criminal acts means sexual crimes against children, sexual abuse, rape or crimes connected with another sexually oriented business, including, but not limited to, distribution of obscenity, prostitution, pandering or tax violations.

Transfer of ownership or control of a sexually oriented business means and includes any of the following:

a. The sale, lease or sublease of the business.

b. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means.
c. The establishment of a trust, management arrangement, gift or other similar legal devise which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control. (Ord. 94-20 §1; Ord. 2015-6, §48)

Sec. 6-353. Permit required.

(a) No sexually oriented business shall be permitted to operate without a valid sexually oriented business permit issued by the City.

(b) It shall be unlawful and a person commits a misdemeanor if he or she operates or causes to be operated a sexually oriented business and said person knows or reasonably should know that:

(1) The business does not have a sexually oriented business permit;

(2) The business has a permit which is under suspension;

(3) The business has a permit which has been revoked; or

(4) The business has a permit which has expired. (Ord. 94-20 §1)

Sec. 6-354. Application for permit for sexually oriented business.

(a) The Licensing Officer is responsible for granting, denying, revoking, renewing, suspending and canceling sexually oriented business permits for proposed or existing sexually oriented businesses.

(b) The Director of Community Development is responsible for ascertaining whether a proposed sexually oriented business for which a permit application has been submitted complies with all locational requirements of this Article.

(c) The Chief of Police is responsible for providing information on whether an applicant has been convicted of a specified criminal act during the time periods set forth in Subparagraph 6-357(c)(1)i.

(d) The Building Department is responsible for inspecting a proposed sexually oriented business in order to ascertain whether it is in compliance with applicable statutes and ordinances.

(e) Any person desiring to operate a sexually oriented business shall file with the Licensing Officer an original and two (2) copies of a sworn permit application on the standard application form supplied by the Licensing Officer.

(f) The completed application shall contain the following information and shall be accompanied by the following documents:

(1) If the applicant is an individual, the individual shall state his or her legal name and any aliases and submit satisfactory proof that he or she is twenty-one (21) years of age.

(2) If the applicant is a legal entity, the person shall state its complete name, the date and place of its organization, evidence that it is in good standing under the laws of the state in which it is organized, and if it is organized under the laws of a state other than Colorado, that it is registered to do business in Colorado, the names and capacity of all officers, directors, managers and principal owners, and the name of the registered agent and the address of the registered office for service of process, if any.

(3) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must state the sexually oriented business's fictitious name.
(4) Whether the applicant or any of the other individuals listed pursuant to Paragraph (1) or (2) above has been convicted of a specified criminal act within the times set forth in Subparagraph 6-357(c)(1)i, and, if so, the specified criminal act involved, the date of conviction and the place of conviction.

(5) Whether the applicant or any of the other individuals listed pursuant to Paragraph (1) or (2) above has had a previous permit under this or other similar sexually oriented business ordinances from another city or county denied, suspended or revoked, and, if so, the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation.

(6) Whether the applicant or any other individuals listed pursuant to Paragraph (1) or (2) above has been a partner in a partnership or a principal owner of a corporation or other legal entity whose permit has previously been denied, suspended or revoked, and, if so, the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(7) Whether the applicant or any other individual listed pursuant to Paragraph (1) or (2) above holds any other permits and/or licenses under this Article or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other permitted businesses.

(8) The location of the proposed sexually oriented business, including a legal description of the property, street address and telephone number, if any.

(9) The applicant’s mailing address and residential address.

(10) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be oriented to the north or to some designated street or object and shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. The Licensing Officer may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared. If the sexually oriented business has or will have a peep booth or booths subject to the provisions of Sections 6-366 through 6-369, the sketch shall show the locations of each manager’s station and designate any portion of the premises in which patrons will not be permitted.

(11) A current certificate and straight-line drawing prepared within thirty (30) days prior to an initial application by a state registered land surveyor depicting:

a. The property lines and the structures of the property to be certified;

b. The property lines of any church, school, dwelling unit (single or multiple), public park or residential district within one thousand five hundred (1,500) feet of the property to be certified; and

c. The property lines and structures of any other sexually oriented business within one thousand five hundred (1,500) feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.
(12) If a person who wishes to operate a sexually oriented business is an individual, he or she must sign the application for a permit as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each principal owner of the applicant must sign the application for a permit as applicant.

(g) In the event that the Licensing Officer determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business, he or she shall promptly notify the applicant of such fact and allow the applicant ten (10) days to properly complete the application. The time period for granting or denying a permit shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.

(h) The fact that a person possesses other types of state or City permits and/or licenses does not exempt him or her from the requirement of obtaining a sexually oriented business permit. (Ord. 94-20 §1)

Sec. 6-355. Duty to supplement application.

Applicants for a permit shall have a continuing duty to promptly supplement application information required by that section in the event that said information changes in any way from what is stated on the application. The failure to comply with said continuing duty within thirty (30) days from the date of such change shall be grounds for suspension of a permit. (Ord. 94-20 §1)

Sec. 6-356. Investigation and application.

(a) Upon receipt of a completed application for a sexually oriented business permit properly filed with the Licensing Officer and upon payment of the nonrefundable application and permit fee pursuant to a separate resolution setting the City of Black Hawk Fee Schedule, the Licensing Officer shall immediately stamp the application as received and send photocopies of the application to the Department of Community Development, the Police Department and the Building Department. Each department or agency shall promptly conduct an investigation of the applicant, application and the proposed sexually oriented business in accordance with its responsibilities under law. Said investigation shall be completed within twenty (20) days of receipt of the completed application by the Licensing Officer. At the conclusion of its investigation, each department or agency shall indicate on the copy of the application its approval or disapproval of the application, date it, sign it and, in the event it disapproves, state the reasons therefor. The Police Department shall only be required to provide the information specified in Subsection 6-354(c) above and shall not be required to approve or disapprove applications.

(b) A department or agency shall disapprove an application if it finds that the proposed sexually oriented business will be in violation of any provision of any statute, code, ordinance, regulation or other law in effect in the City. After its indication of approval or disapproval, each department or agency shall immediately return a copy of the application to the Licensing Officer. (Ord. 94-20 §1; Ord. 2015-6, §49)

Sec. 6-357. Issuance of permit.

(a) The Licensing Officer shall grant or deny an application for a permit within thirty (30) days from the date of its proper filing. Upon the expiration of the thirtieth day, the applicant shall be permitted to begin operating the business for which the permit is sought, unless and until the Licensing Officer notifies the applicant of a denial of the application and states the reason for that denial.

(b) Grant of application for permit.

(1) The Licensing Officer shall grant the application unless one (1) or more of the criteria set forth in Subsection (c) below is present.
(2) The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date and the address of the sexually oriented business. The permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it can be easily read at any time.

(c) Denial of application for permit.

(1) The Licensing Officer shall deny the application for any of the following reasons:

a. An applicant is under twenty-one (21) years of age.

b. An applicant is overdue on his or her payment to the City of taxes, fees, fines or penalties assessed against him or her or imposed upon him or her in relation to a sexually oriented business.

c. An applicant has failed to provide information required by this Section for the issuance of the permit or has falsely answered a question or request for information on the application form.

d. The premises to be used for the sexually oriented business have been disapproved by an inspecting agency pursuant to the provisions of Subsection 6-356(b).

e. The application or permit fees have not been paid.

f. An applicant or the proposed business is in violation of, or is not in compliance with, any of the provisions of this Article.

g. The granting of the application would violate a statute, ordinance or court order.

h. The applicant has a permit under this Article which has been suspended or revoked within the previous twelve (12) months.

i. An applicant has been convicted of a specified criminal act or acts for which:

1. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense;

2. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense; or

3. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the convictions are of two (2) or more misdemeanors.

The fact that a conviction is being appealed shall have no effect on disqualification of the applicant. An applicant who has been convicted of a specified criminal act or acts may qualify for a sexually oriented business permit only when the time period required above has elapsed.

(2) If the Licensing Officer denies the application, he or she shall notify the applicant of the denial and state the reason for the denial. (Ord. 94-20 §1)

Sec. 6-358. Expiration of permit.

(a) Each permit shall expire one (1) year from the date of issuance and may be renewed only by making application (for renewals, filing of original survey shall be sufficient) as provided in this Article. Application for renewal of a permit shall be made at least thirty (30) days
before the expiration date of the permit. If a renewal application is made fewer than thirty (30) days before the expiration date of a permit, the expiration of the permit will not be affected.

(b) If, subsequent to denial of renewal, the Licensing Officer finds that the basis for denial of the renewal of the permit has been corrected, the applicant shall be granted a permit if at least ninety (90) days have elapsed since the date denial became final. (Ord. 94-20 §1)

Sec. 6-359. Suspension of permit.

(a) The Licensing Officer shall suspend a permit for a period not to exceed thirty (30) days if he or she determines that a permittee or an employee of a permittee has:

(1) Violated or is not in compliance with any section of this Article;

(2) Refused to allow an inspection of the sexually oriented business premises as authorized by this Article;

(3) Operated the sexually oriented business in violation of a building, fire, health or zoning statute, code, ordinance or regulation, whether federal, state or local, said determination being based on investigation by the division, department or agency charged with enforcing said rules or laws. In the event of such a statute, code, ordinance or regulation violation, the Licensing Officer shall promptly notify the permittee of the violation and shall allow the permittee a seven-day period in which to correct the violation. If the permittee fails to correct the violation before the expiration of the seven-day period, the Licensing Officer shall forthwith suspend the permit and shall notify the permittee of the suspension;

(4) Engaged in a permit transfer contrary to Section 6-361, the Licensing Officer shall forthwith notify the permittee of the suspension. The suspension shall remain in effect until the applicable section of this Article has been satisfied; or

(5) Operated the sexually oriented business in violation of the hours of operation provisions of Section 6-357.

(b) The suspension shall remain in effect until the violation of the statute, code, ordinance or regulation in question has been corrected. (Ord. 94-20 §1)

Sec. 6-360. Revocation of permit.

(a) The Licensing Officer shall revoke a sexually oriented business permit upon determining that:

(1) A cause of suspension in Section 6-359 above occurs and the permit has been suspended within the preceding twelve (12) months;

(2) A permittee gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a permit;

(3) A permittee or an employee has knowingly allowed possession, use or sale of controlled substances (as defined in Part 3 of Article 22 of Title 12, C.R.S.) on the premises;

(4) A permittee or an employee has knowingly allowed prostitution on the premises;

(5) A permittee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's permit was suspended;
(6) A permittee has been convicted of a specified criminal act for which the time period set forth in Subparagraph 6-357(c)(1)i has not elapsed;

(7) On two (2) or more occasions within a twelve-month period, a person or persons committed an offense, occurring in or on the permitted premises, constituting a specified criminal act for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed. The fact that a conviction is being appealed shall have no effect on the revocation of the permit;

(8) A permittee is delinquent in payment to the City or State for any taxes or fees;

(9) A permittee or an employee has knowingly allowed any specified sexual activity to occur in or on the permitted premises; or

(10) The permittee has operated more than one (1) sexually oriented business within the same building, structure or portion thereof.

(b) When the Licensing Officer revokes a permit, the revocation shall continue for one (1) year and the permittee shall not be issued a sexually oriented business permit for one (1) year from the date revocation became effective. (Ord. 94-20 §1)

Sec. 6-361. Transfer of permit.

(a) A permittee shall not operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application for permit.

(b) A permittee shall not transfer his or her permit to another person unless and until such other person satisfies the following requirements:

(1) Obtains an amendment to the permit from the Licensing Officer which provides that he or she is now the permittee, which amendment may be obtained only if he or she has completed and properly filed an application with the Licensing Officer, setting forth the information called for under Section 6-354 in the application; and

(2) Pays a transfer fee of twenty percent (20%) of the annual permit fee.

(c) No permit may be transferred when the Licensing Officer has notified the permittee that suspension or revocation proceedings have been or will be brought against the permittee.

(d) A permittee shall not transfer his or her permit to another location.

(e) Any attempt to transfer a permit either directly or indirectly in violation of this Section is hereby declared void. (Ord. 94-20 §1)

Sec. 6-362. Judicial review of permit denial, suspension or revocation.

After denial of an application, denial of a renewal of an application or suspension or revocation of a permit, the applicant or permittee may seek judicial review of such administrative action in any court of competent jurisdiction. The court shall promptly review such administrative action. (Ord. 94-20 §1)

Sec. 6-363. Manager's license required.

It shall be unlawful, and a person commits a misdemeanor, if he or she works as a manager of a sexually oriented business without first obtaining a manager's license. (Ord. 94-20 §1)

Sec. 6-364. Application for manager's license.

(a) A manager shall submit an application for a manager's license on a form to be provided by the Licensing Officer. The application shall contain the applicant's name, address, date of birth, phone number and the information required in Section 6-354.
(b) The Licensing Officer shall grant the application within ten (10) days of its filing unless:

(1) The applicant is under the age of twenty-one (21);

(2) The applicant has failed to provide the information required by this Section;

(3) The license fee has not been paid; or

(4) The applicant has been convicted of a specified criminal act within the times set forth in Section 6-357. (Ord. 94-20 §1)

Sec. 6-365. Inspection.

(a) An applicant or permittee shall permit representatives of the Building Department, the Health Department and the Fire Department to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(b) A person who operates a sexually oriented business or his or her agent commits a misdemeanor if he or she refuses to permit such lawful inspection of the premises at any time that it is occupied or open for business. (Ord. 94-20 §1)

Sec. 6-366. Regulation of peep booths.

(a) A person who operates or causes to be operated a sexually oriented business, which exhibits on the premises in a peep booth a film, video cassette or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the requirements of this Article.

(b) The sexually oriented business shall have one (1) or more manager's stations. A manager's station may not exceed thirty-two (32) feet of floor area. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Licensing Officer.

(c) At least one (1) employee must be on duty and situated at each manager's station at all times that any patron is present inside the premises.

(d) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding rest rooms. Rest rooms may not contain video display equipment. If the premises have two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this Subsection must be by direct line of sight from the manager's station. The view area shall remain unobstructed by any doors, walls, merchandise, display racks or other materials at all times, and no patron shall be permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Section 6-354 of this Article.

(e) No peep booth may be occupied by more than one (1) person at any one (1) time.

(f) No door, screen or other covering shall be placed or allowed to remain on any peep booth, and no holes or openings shall be placed or allowed to remain in the wall between any two (2) adjacent peep booths.

(g) A person having a duty under this Article commits a misdemeanor if he or she knowingly fails to fulfill that duty. (Ord. 94-20 §1)
Sec. 6-367. Hours of operation.

It shall be unlawful for a sexually oriented business to be open for business or for the licensee or any employee of a licensee to allow patrons upon the licensed premises:

(1) On any Tuesday through Saturday from 2:00 a.m. until 8:00 a.m.;

(2) On any Monday other than a Monday which falls on January 1, from 12:00 a.m. until 8:00 a.m.;

(3) On any Sunday from 2:00 a.m. until 12:00 p.m.; or

(4) On any Monday which falls on January 1, from 2:00 a.m. until 8:00 a.m. (Ord. 94-20 §1)

Sec. 6-368. Exemption.

This Article shall not apply to those areas of an adult motel that are private rooms. (Ord. 94-20 §1)

Sec. 6-369. Minimum age.

(a) It shall be unlawful for any person under the age of twenty-one (21) years to be upon the premises of a sexually oriented business.

(b) It shall be unlawful for the licensee or any employee of the licensee to allow anyone under the age of twenty-one (21) years upon the premises of a sexually oriented business. (Ord. 94-20 §1)

Sec. 6-370. Lighting regulations.

(a) Excluding a private room of an adult motel, the interior portion of the premises of a sexually oriented business to which patrons are permitted access shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place (including peep booths) at an illumination of not less than five (5) foot-candles as measured at the floor level.

(b) It shall be the duty of the licensee and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises. (Ord. 94-20 §1)

Sec. 6-371. Stage required in adult cabaret and adult theater.

Any adult cabaret or adult theater shall have one (1) or more separate areas designated as a stage in the diagram submitted as part of the application for the licensee. Entertainers shall perform only upon the stage. The stage shall be fixed and immovable. No seating for the audience shall be permitted within six (6) feet of the edge of the stage. No members of the audience shall be permitted upon the stage or within six (6) feet of the edge of the stage. (Ord. 94-20 §1)

Sec. 6-372. Conduct in sexually oriented businesses.

(a) No licensee, manager or employee mingling with the patrons of a sexually oriented business, or serving food or drinks, shall be in a state of nudity. It is a defense to prosecution for a violation of this Section that an employee of a sexually oriented business exposed any specified anatomical area during the employee's bona fide use of a rest room, or during the employee's bona fide use of a dressing room which is accessible only to employees.

(b) No licensee or employee shall encourage or knowingly permit any person upon the premises to touch, caress or fondle the breasts, anus or specified anatomical areas of any person. (Ord. 94-20 §1)

Sec. 6-373. Employee tips.

(a) It shall be unlawful for any employee of a sexually oriented business to receive tips from patrons except as set forth in Subsection (b) below.
(b) A licensee that desires to provide for tips from its patrons shall establish one (1) or more boxes or other containers to receive tips. All tips for such employees shall be placed by the patron of the sexually oriented business into the tip box.

(c) A sexually oriented business that provides tip boxes for its patrons as provided in this Section shall post one (1) or more signs to be conspicuously visible to the patrons on the premises in letters at least one (1) inch high to read as follows: "All tips are to be placed in the tip box and not handed directly to employees. Any physical contact between a patron and employees is strictly prohibited." (Ord. 94-20 §1)

Sec. 6-374. Unlawful acts.

It shall be unlawful for the licensee or for any manager or employee to violate any of the requirements of this Article or to knowingly permit any patron to violate the requirements of this Article. (Ord. 94-20 §1)

Sec. 6-375. Nude model studio; exemptions.

The provisions of this Article regulating nude model studios do not apply to:

(1) A college, junior college or university supported entirely or partly by taxation;

(2) A private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or

(3) A business located in a structure which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and where no more than one (1) nude model is on the premises at any one (1) time. (Ord. 94-20 §1)

Sec. 6-376. City's remedies.

(a) If any person fails or refuses to obey or comply with or violates any of the criminal provisions, such person upon conviction of such offense shall be guilty of a misdemeanor and shall be punished by a fine not to exceed four hundred ninety-nine dollars ($499.00). Each violation or noncompliance shall be considered a separate and distinct offense. Further, each day of continued violation shall be considered as a separate offense.

(b) Nothing herein contained shall prevent or restrict the City from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or noncompliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.

(c) All remedies and penalties provided for in this Section shall be cumulative and independently available to the City, and the City shall be authorized to pursue any and all remedies set forth in this Section to the full extent allowed by law. (Ord. 94-20 §1)

Sec. 6-377. Fees for sexually oriented businesses.

The annual license fees under this Article shall be set by resolution of the City Council adopting the City of Black Hawk Fee Schedule. (Ord. 94-20 §1; Ord. 2015-6, §50)

Secs. 6-378—6-390. Reserved.

ARTICLE XII

Regulation of Vendors

Sec. 6-391. Purpose and application.

The purpose of this Article is to regulate and restrict street vendors in order to promote the free flow of pedestrian traffic and in order to
prevent the creation of a nuisance. The provisions of this Article shall apply on public sidewalks and rights-of-way belonging to the City. (Ord. 94-25 §1)

Sec. 6-392. Vending prohibited in certain locations.

Vending by street vendors is prohibited in the following locations:

(1) Within the gaming and residential districts of the City.

(2) Within a designated loading zone.

(3) On any public sidewalk.

(4) Within five (5) feet of the entranceway to any building.

(5) Within one hundred (100) feet of any driveway entrance to a police or fire station, or within five (5) feet of any other driveway.

(6) Within twenty (20) feet of any shuttle or bus stop.

(7) On any street.

(8) Within five (5) feet of the pedestrian crosswalk at any intersection or designated pedestrian crossing point.

(9) Within ten (10) feet of any handicapped parking space or access ramp. (Ord. 94-25 §1)

Sec. 6-393. Vending conditional use permit.

It shall be unlawful for any person to sell or attempt to sell any commodity by means of vending such commodity within the City without first securing a permit and payment of the permit fee, as set forth in the City of Black Hawk Fee Schedule. In order to obtain a vending conditional use permit, proof of insurance and a current business license from the City must be submitted along with the permit fee. (Ord. 94-25 §1; Ord. 2015-6, §51)

Sec. 6-394. Regulations.

The following rules and regulations shall be complied with by each person using a vehicle for vending:

(1) It shall be unlawful for any vendor to sell or attempt to sell any commodity by means of any outcry, sound, speaker or amplifier, or any instrument or device which can be heard for a distance greater than three hundred (300) feet, or when passing a hospital, church or other place of worship during the hours when services are being held.

(2) It shall be unlawful for any such vendor to:

a. Stop anywhere within twenty-five (25) feet of an intersection when making a sale or attempting to make a sale;

b. Double park or park in any manner contrary to any ordinance relating to parking when attempting a sale or when making a sale;

c. Make a U-turn in any block;

d. Drive his or her vehicle backwards to make or attempt any sale;

e. Sell to any person standing in the street; or

f. Conduct vending in locations described in Section 6-392 above.

(3) The term vehicle, as used in this Article, shall include every device in, upon or by which any person or property is or may be transported or drawn upon the streets, irrespective of the source from which the power to propel such vehicle may come, and irre-
spective of the number of wheels of such vehicles. (Ord. 94-25 §1)

Secs. 6-395—6-410. Reserved.

ARTICLE XIII

Residential Solicitation*

Sec. 6-411. Findings and legislative intent.

The City Council makes the following legislative findings:

(a) The City of Black Hawk is a home rule municipal corporation organized in accordance with Article XX of the Colorado Constitution;

(b) The City of Black Hawk has an interest in protecting its citizens’ right to privacy in their own homes, in preserving the public peace and order, and in protecting the public safety and welfare;

(c) The City of Black Hawk has a residential community whose residents value the peace and quiet enjoyment of their private property;

(d) The City Council finds that unregulated door-to-door solicitation within the City would degrade and have an adverse impact on the peace and quiet enjoyment of private property;

(e) Criminal activity on private property often occurs during nighttime hours;

(f) The City Council finds and determines that unregulated door-to-door solicitation within the City would present a danger to City residents and their private property;

(g) The City Council finds and determines that the interests of the City and of the public are accommodated by a regulatory scheme that permits solicitation during reasonable daytime and evening hours while promoting public safety through the use of a reasonable registration method;

(h) The City Council finds that the owner or occupant should be given the opportunity to post signs prohibiting entry onto his or her property for door-to-door commercial solicitation and the opportunity to opt in to a no-visit list prohibiting entry onto their property for door-to-door commercial solicitation and that these methods provide a balance between the individuals’ right to privacy within their home, promote and protect the safety and privacy of the public, and protect the interests of commercial solicitors; and

(i) The City Council desires to adopt a regulatory program in furtherance of these interests, purposes, and goals. (Ord. 2015-16, §1)

Sec. 6-412. Definitions.

As used in this Article, unless the context otherwise requires, the following words shall have the following meanings:

*Editor’s note: Ord. No. 2015-16, § 1, adopted July 8, 2015, repealed the former Art. XIII, §§ 6-411—6-413, and enacted a new Art. XIII, §§ 6-411—6-430.1, as set out herein. The former article pertained to similar subject matter and derived from Ord. 2007-4 § 1; and Ord. No. 2015-6, § 52, adopted March 11, 2015.

\textit{Canvasser} means a person who enters or remains upon any private premises in the City, not having been requested or invited by the occupants thereof, for the purpose of distributing a noncommercial flyer or for the purpose of attempting to enlist support for or against a particular religion, philosophy, ideology, political party, issue, or can-
candidate, even if incidental to such purpose the canvasser accepts the donation of money for or against such cause.

*City* means the City of Black Hawk, Colorado.

*Clerk* means the City Clerk of the City.

*Commercial flyer* means any printed or written material, any sample or device, circular, leaflet, pamphlet, newspaper, magazine, publication, booklet, handbill, or other printed or otherwise reproduced original or copy of any manner of literature or paper containing a written or pictorial message that is predominantly and essentially an advertisement and is distributed or circulated for advertising purposes, or for any direct or indirect private financial gain of any person or entity so engaged as advertiser or distributor, except that a telephone directory or newspaper of general circulation in the City published primarily for the purpose of disseminating news shall not be considered a commercial flyer.

*Commercial solicitor* means any person, whether as volunteer, owner, agent, consignee, or employee, who engages in door-to-door commercial solicitation.

*Door-to-door commercial solicitation* means to enter or remain upon any private premises in the City, not having been requested or invited by the occupants thereof, to attempt to make or to make personal contact with the occupant for the primary purpose of:

1. Contacting to solicit the immediate or future purchase or sale of any goods, wares, or merchandise, other than newspaper or magazine subscriptions, or any services to be performed immediately or in the future, whether or not the person has, carries, or exposes a sample of such goods, wares, or merchandise, and whether or not he or she is collecting advance payments for such sales; or

2. Personally delivering to the resident a handbill or flyer advertising a commercial event, activity, good, or service that is offered to the resident for purchase at a location away from the residence or at a future time.

*Door-to-door noncommercial solicitation* means to enter or remain upon any private premises in the City, not having been requested or invited by the occupants thereof, to attempt to make or to make personal contact with the occupant for the primary purpose of:

1. Seeking or asking for a gift or donation for a public entity or nonprofit organization exempt from Federal income tax under 26 U.S.C. 501(c)(3);

2. Soliciting the sale of goods, wares, or merchandise for present or future delivery, or the sale of services to be performed immediately or in the future, with the entire proceeds of such sale to be paid directly to, or used exclusively for the benefit of, a public entity or nonprofit organization exempt from Federal income tax under 26 U.S.C. 501(c)(3);

3. Personally delivering to the resident a handbill or flyer advertising a future, not-for-profit event, activity, good, or service;

4. Proselytizing on behalf of a religious organization; or

5. Soliciting support for a political candidate or organization, or ballot measure or ideology.
Employer means any person, company, corporation, business, partnership, organization, or any other entity on behalf of whom a person is acting.

Noncommercial flyer is any printed or written material, any sample or device, circular, leaflet, pamphlet, newspaper, magazine, booklet, handbill, or any other printed or otherwise reproduced original or copy of any manner of literature or paper containing a written or pictorial message that is distributed or circulated solely for nonprofit purposes.

Noncommercial solicitor means any person, whether as volunteer, owner, agent, consignee, or employee, who engages in door-to-door noncommercial solicitation.

Permit means a document issued by the City Clerk authorizing a commercial solicitor to engage in door-to-door commercial solicitation.

Permit holder means any person to whom a permit has been issued under the provisions of this Article.

Person means a natural person or business entity, such as, without limitation, a corporation, association, firm, joint venture, estate, trust, business trust, syndicate, fiduciary, partnership, or any group or combination thereof.

Residence means private residences located within the City, including, but not limited to, houses, condominium units, and apartments, or the yards, grounds, or hallways thereof.

Sales tax means the tax authorized and levied by and within the City, pursuant to ordinance. (Ord. 2015-16, §1)

Sec. 6-413. All solicitation prohibited by posting of "No Solicitation" or "No Trespassing" sign.

It shall be unlawful for any solicitor, including any commercial solicitor and any noncommercial solicitor, to enter or remain upon any public or private premises in the City if a "No Solicitation", "No Trespassing", or other sign conveying a similar message is posted at or near the entrance or entrances to such premises. This provision shall apply to all solicitation including, without limitation, all solicitation activities that are religious, charitable, or political in nature and all solicitation of newspaper or magazine subscriptions. (Ord. 2015-16, §1)

Sec. 6-414. "Do Not Solicit" list for commercial solicitations.

(a) Any owner or lawful occupant of private property within the City who wishes to prohibit door-to-door commercial solicitation at his or her residence may register such property on the City's "Do Not Solicit" list by completing a form prepared by the City Clerk, which form may be submitted to the City either in person, by mail, or on the City's website. Such registration shall take effect thirty (30) calendar days after the date of the City's receipt of the registration form and shall remain in effect until cancelled by the owner or occupant, or until the person filing the form ceases to be the owner or occupant of the property, whichever occurs soonest.

(b) The City Clerk shall maintain and publish on the City's website a "Do Not Solicit" list consisting of all residential addresses that have been registered under Subsection (a) above and that have not been removed by the City under Subsection (d) below or by the owner or lawful occupant of the registered property. Each permit holder shall be responsible for obtaining and reviewing a copy of such list immediately upon issuance of a permit under this Article.
and at such intervals thereafter as may be reasonably necessary to ensure compliance with the requirements of Subsection (c) below.

(c) As of the effective date of the registration of a residential address under Subsection (a) above, no person shall engage in door-to-door commercial solicitation at any property listed on the "Do Not Solicit" list. All door-to-door commercial solicitation at any such property shall be prohibited until such time, if at all, that the property has been removed from the "Do Not Solicit" list.

(d) Each residential address appearing on the City’s "Do Not Solicit" list will remain on the list until cancelled by the owner or occupant, or until the person filing the form ceases to be the owner or occupant of the property, whichever occurs soonest.

(e) Neither the City nor any of its officers, employees, agents, or authorized volunteers shall be liable to any person for any injuries, damages, or liabilities of any kind arising from or relating to any errors or omissions that may occur in compiling or maintaining the "Do Not Solicit" list. (Ord. 2015-16, §1)

Sec. 6-415. Registration required.

No person shall act as a commercial solicitor or otherwise engage in door-to-door commercial solicitation within the City without first registering with the City Clerk and obtaining a permit in accordance with this Article. Canvassers and noncommercial solicitors are not required to register or obtain a permit, but may do so for the purpose of reassuring City residents of the canvasser or noncommercial solicitor's good faith. (Ord. 2015-16, §1)

Sec. 6-416. Permits and identification badges for commercial solicitors.

(a) Any person seeking to engage in commercial door-to-door solicitation, when not previously requested or invited to do so by the owner or occupant of the residence, must obtain a permit from the City Clerk and pay the permit fee as provided in this Article before commencing any commercial door-to-door solicitation.

(b) All permits shall be issued in the name of the applicant. Upon issuance of each permit, the City Clerk shall create and maintain a list of all persons authorized to engage in door-to-door commercial solicitation under the permit. It shall be the sole responsibility of the permit holder to:

(1) Provide a copy of the permit to each person authorized to engage in solicitation under the permit;

(2) Ensure that each person authorized to solicit under the permit complies with the terms and conditions of the permit and with the provisions of this Article;

(3) Notify the City Clerk in writing of any persons to be added to or removed from the list of authorized solicitors; and

(4) Submit to the City Clerk, for each person to be added to such list, the information required under Section 6-418(c), together with payment of the identification badge fee.

(c) Permit applicants shall submit their applications to the City Clerk via mail or in person. The City Clerk shall, within ten (10) business days of the receipt of a complete application for a permit under this Article, issue such permit, together with identification badges for all persons authorized to engage in door-to-door commercial solicitation under the permit, unless the City Clerk determines that the permit application is denied.

(d) Subsequent to the issuance of any permit, and upon receipt of the information and fee required by this Section, the City Clerk shall, within five (5) business days, issue an
identification badge to any new or additional person that is to be authorized to solicit under the permit, so long as such person is not otherwise prohibited from solicitation under this Article. The City Clerk shall also, within five (5) business days, issue a replacement identification badge to any permitted commercial solicitor who, by affidavit, notifies the City Clerk that his or her identification badge has been lost or stolen, and who pays an additional identification badge fee set forth in Section 6-417(b).

(e) If an employer applies for and is granted a permit under this Article, the employer shall be entitled to obtain identification badges from the City Clerk for each employee or agent authorized to solicit under the permit.

(f) Each employer who engages any other person for salary, compensation, or other remuneration to engage in door-to-door commercial solicitation, shall, before commencing such solicitation, register and obtain a sales tax license from the City and pay the license fee as provided by Section 4-70 of this Code. (Ord. 2015-16, §1)

Sec. 6-417. Fees.

(a) Permit fee. The permit fee for each permit issued hereunder shall be set by separate resolution of the City Council. Such permits shall be issued for one (1) year. In addition, each person engaging in door-to-door commercial solicitation under such permit shall be required to pay an amount to be determined by separate resolution of the City for the providing of an identification badge.

(b) Replacement identification badge fee. The fee to replace a lost or stolen identification badge shall be in an amount to be determined by separate resolution of the City. (Ord. 2015-16, §1)

Sec. 6-418. Application contents.

Each person applying for a door-to-door commercial solicitation permit shall submit to the City Clerk an affidavit on a form supplied by the City Clerk stating:

(a) The full name, business address, and business telephone number of the applicant;

(b) A complete list of all persons to be authorized to solicit under the permit;

(c) For each person to be authorized to solicit under a permit, the following information:

(1) Name, address, telephone number, and date of birth;

(2) A current copy of the person's criminal background check, as provided by the Black Hawk Police Department, dated no more than sixty (60) days prior to the date of the application or the person's authorization for the City Clerk to conduct a criminal background check;

(3) Whether the person is presently on parole or probation for any criminal violations;

(4) A description of the individual, including height, weight, eye color, and hair color;

(5) The number and state of issuance of the person's motor vehicle operator's license or chauffeur's license, if any, or copy of other state-issued photo identification;

(6) The license plate number and state of issuance of any motor vehicle owned, rented, or being driven by the person and of any motor vehicle which the person intends to use in the course of door-to-
door commercial solicitation, a description of such vehicle, and the name and address of the owner of such vehicle;

(7) A brief explanation of the nature of the door-to-door commercial solicitation activity requiring a permit under this Article;

(8) If the applicant is a foreign corporation or an employee of a foreign corporation, the name, address, and telephone number of an agent for process residing in the State of Colorado;

(9) Proof that the applicant has obtained a valid City of Black Hawk sales tax license;

(10) A list of all cities in which the applicant presently holds a peddler's or solicitor's license;

(11) Whether the applicant is presently on parole or probation for any criminal violations;

(12) The names, business addresses, and business telephone numbers of all individuals employing and/or supervising the applicant; and

(13) The number of permits requested and the names and addresses of all persons who may use such permits, not to exceed twenty-five (25) permits. (Ord. 2015-16, §1)

Sec. 6-419. Grounds for denying permit.

(a) The City Clerk may deny the issuance of a permit for any of the following reasons:

(1) Any misrepresentation, fraud, deception, breach of warranty, or breach of contract in the City or elsewhere;

(2) Failure to comply with this Article or violation of any ordinance applicable to the applicant's permitted activities;

(3) Failure to obtain a sales tax license as required by the City or failure of the applicant, his or her supervisor, or his or her employer to remit any sales tax due to the City;

(4) Any felony conviction for crimes against the person or property of another, or institutionalization for mental illness which caused acts of violence against the person or property of another; provided, however, that such felony convictions or institutionalization occurred within the five (5) years preceding the date of the application.

(5) Conviction of any crime committed while engaged in solicitation in the City.

(b) For purposes of this Section:

(1) Crimes or acts of violence against the person of another shall include homicide, attempted homicide, rape, attempted rape, sexual assault, assault, battery, and other similar felonies involving moral turpitude by whatever name;

(2) Crimes or acts against the property of another shall include theft, burglary, breaking and entering, larceny, and other similar felonies involving moral turpitude by whatever name. (Ord. 2015-16, §1)

Sec. 6-420. Revocation of permit.

If the City Clerk finds that any of the grounds for denial set forth in Section 6-419 above exist, or that an applicant has made a false statement in his or her application, or that an employer has failed to supervise solicitation conducted under the permit so as to reasonably ensure that such solicitation is in compliance with the terms of the permit and with the provisions of this Article, or that the permit holder has autho-
rized, condoned, or knowingly tolerated any unlawful solicitation or any solicitation conducted in such a manner as to constitute a menace to the health, safety, or general welfare of the public, the City Clerk shall revoke and shall not renew the permit. The permittee may appeal the City Clerk's decision in the manner set forth in Section 6-423 below. (Ord. 2015-16, §1)

Sec. 6-421. Transfer of permits.

Permits may not be transferred from person to person. (Ord. 2015-16, §1)

Sec. 6-422. Records.

The City Clerk shall maintain records showing each permit issued and the alleged violations of this Article. (Ord. 2015-16, §1)

Sec. 6-423. Appeal.

At his or her election, an applicant may appeal any decision relating to his or her permit by the City Clerk to the City Council. If the applicant requests, the City Council shall hold a hearing pursuant to the procedures set forth in the City Charter, ordinances and resolutions of the City. The City Council's decision shall be by a majority of a quorum of the City Council. (Ord. 2015-16, §1)

Sec. 6-424. Expiration of permit.

Each permit shall expire one (1) year from the date of issuance, unless otherwise revoked as provided by law. Any person wishing to renew a permit must apply for the renewal no less than thirty (30) days prior to the expiration of its term. Said application shall be accompanied by a criminal background check as required under Section 6-418(c) for each person who is to be authorized to solicit under the permit during its renewal term. Failure to apply for such renewal within said thirty-day time period shall result in the expiration of the permit. The renewal fee shall be determined by the City Clerk in an amount sufficient to defray the costs incurred by the City in processing the renewal application. Said fee shall be nonrefundable. (Ord. 2015-16, §1)

Sec. 6-425. Identification badges.

The City Clerk shall issue to each permitted commercial solicitor, at the time of the delivery of his or her permit, an identification badge bearing the words "Permitted Solicitor", the period of time for which the permit is issued, and the number of the permit. The identification badges shall contain a photograph of the solicitor and include the names of the solicitor and employer, if any. Each permitted commercial solicitor shall conspicuously display such identification badge whenever he or she is engaged in door-to-door commercial solicitation. The City Clerk may cause the same document to be used as the identification badge and the permit. (Ord. 2015-16, §1)

Sec. 6-426. Exhibit of permit.

Whenever requested by any police officer or by any customer or prospective customer of the commercial solicitor, the commercial solicitor shall exhibit his or her identification badge and his or her permit. (Ord. 2015-16, §1)

Sec. 6-427. Permissible times.

All door-to-door commercial solicitation and all door-to-door noncommercial solicitation shall be undertaken and completed between the hours of 9:00 a.m. and the later of 8:00 p.m. or sunset, as announced and published by the National Weather Service daily. (Ord. 2015-16, §1)

Sec. 6-428. Distribution of handbills and commercial flyers.

In addition to the other regulations contained in this Article, a person attempting to
distribute or distributing commercial or non-commercial flyers within the City shall observe the following regulations:

   (1) No commercial or noncommercial flyer shall be left at or attached to any sign, utility pole, transit shelter, or other structure within the public right-of-way.

   (2) No commercial or noncommercial flyer shall be left at or attached to any privately owned property in a manner that causes damage to such privately owned property.

   (3) Any commercial solicitor observed distributing commercial flyers shall be required to identify himself or herself to the police and verify his or her registration. (Ord. 2015-16, §1)

Sec. 6-429. Construction.

It is the intent of the City Council that not only each person who engages in door-to-door commercial solicitation in the City, but also each principal on behalf of whom such person is acting, shall be registered and permitted as required by this Article. (Ord. 2015-16, §1)

Sec. 6-430. Exemptions.

(a) The following classes of persons otherwise engaging in door-to-door commercial solicitation shall not be required to obtain a permit otherwise required by this Article:

   (1) Delivery persons or route persons who are engaged in the business of servicing and soliciting in connection with sales and delivery routes of newspapers, milk and bread;

   (2) All companies that have a franchise agreement with the City;

   (3) Persons advocating civic, religious, charitable, or political causes;

   (4) Members of a nationally recognized youth organization including, but not limited to, the Boy Scouts of America, the Girl Scouts of America, and the Boys and Girls Clubs of America, engaging in such organization's sponsored fundraising events; and

   (5) School children engaging in school authorized or sponsored fundraising activities.

(b) Notwithstanding the exemptions contained in this Section, such persons otherwise exempt pursuant to Paragraphs (1) through (5) of Subsection (a) above shall not be required to obtain an identification badge as described in Section 6-425 prior to engaging in door-to-door commercial solicitation or solicitation of contributions, and shall not pay the fee for such identification badge as set forth in Section 6-417(b) above. (Ord. 2015-16, §1)

Sec. 6-430.1. Violation; penalties.

(a) It is unlawful for any person to engage in door-to-door commercial solicitation without a permit or an identification badge as required by this Article; any person who so engages in door-to-door commercial solicitation shall, upon conviction, be punished by a fine not to exceed four hundred ninety-nine dollars ($499.00) per offense. Each day of such violation shall be deemed a separate offense.

(b) It is unlawful for any applicant, permittee, or solicitor to violate any Section of this Article. Any such violator shall, upon conviction, be punished by a fine not to exceed four hundred ninety-nine dollars ($499.00) and shall be subject to having his or her permit, permit application, and/or identification badge revoked, suspended, or denied. Each violation of the provisions of this Article shall be deemed a separate offense.

(c) It is unlawful for any person to employ any other person to engage in door-to-door commercial solicitation for a salary, commis-
sion, or other remuneration in the City, without causing such employee to comply with this Article, and such person shall, upon conviction, be punished by a fine of not more than four hundred ninety-nine dollars ($499.00) and shall be subject to having his or her permit, permit application, and/or identification badge revoked, suspended, or denied. Each person employed without compliance with the provisions of this Article shall be deemed a separate offense.

(d) Any person in violation of Section 6-414 shall, upon conviction, be punished by a fine not to exceed four hundred ninety-nine dollars ($499.00) per offense and, if a commercial solicitor, shall be subject to having his or her permit, permit application, and/or identification badge revoked, suspended, or denied. (Ord. 2015-16, §1)

ARTICLE XIV

Mobile Auto Repair Businesses

Sec. 6-431. Purpose and application.

The purpose of this Article is to regulate and restrict mobile auto repair businesses in order to promote health and safety within the City and in order to prevent the creation of a nuisance. The provisions of this Article shall apply to all mobile auto repair businesses operating within the City. (Ord. 2008-20 §1)

Sec. 6-432. Definitions.

The following words, terms and phrases, when used in this Article, shall have the following meanings:

Applicant means any person who submits an application for a mobile auto repair business license.

Mobile auto repair business means any business operating for profit which utilizes a vehicle that goes from place to place for the purpose of making mobile motor vehicle body and paint repairs or mobile mechanical repairs.

Mobile body and paint repairs means minor dent and blemish removal/repair on motor vehicles and the performance of minor reparative and touch-up painting to damaged or blemished areas of motor vehicles.

Mobile mechanical repairs means minor mechanical work performed on motor vehicle engines, engine components and accessories, air conditioning, brakes, transmissions, vehicle suspensions, exhaust systems, tire repair and replacement, electrical systems or the repair or replacement of window glass. (Ord. 2008-20 §1)

Sec. 6-433. Permit required.

(a) It shall be unlawful for any person to operate a mobile auto repair business within the City without first securing a permit and paying the permit fee pursuant to a separate resolution setting the City of Black Hawk Fee Schedule.

(b) Application requirements. Prior to the issuance of a mobile auto repair business license, the applicant shall provide the City Clerk with the following:

(1) The applicant's written policies and procedures for:

a. The storage, use and disposal of cleaning solvents and thinners used in conjunction with painting and repair activities in accordance with Federal, State and local laws;

b. The recording of the daily use of solvents, thinners, coating materials and formulations used in conjunction with mobile body and paint repairs;
c. The packaging, handling and transportation of hazardous materials used in conjunction with mobile auto repairs;

d. The control of solids and liquids produced during grinding, sanding or coating, to prevent contact with the ground and potentially contaminating storm water runoff;

e. The storage, handling and disposal of hazardous wastes created as a result of mobile auto repairs, in accordance with Federal and State laws; and

f. Workplace safety and organization.

(2) The permanent street address of the applicant's primary place of business where calls are received and the mobile vehicles are parked when not in use.

(3) The make, model and year of all vehicles to be used for purposes of the mobile auto repair business.

(c) License period. All licenses shall expire January 1 of each calendar year.

d) Renewal. In the event that a mobile auto repair licensee wishes to renew his or her license, the licensee shall first submit to the City an application updating all information contained in the initial application, along with the annual permit fee. (Ord. 2008-20 §1; Ord. 2015-6, §53)

Sec. 6-434. Regulations.

Every mobile auto repair business shall comply with the following rules and regulations:

(1) Every mobile auto repair business shall maintain, at the licensee's primary place of business, original records which shall include all work orders and invoices for all customers for mobile auto repairs that have been performed.

(2) Notwithstanding any provisions of Chapter 16 of this Code, mobile auto repair businesses shall be permitted in all of the City's zone districts, provided that the mobile auto repair business is not operated in a manner that would obstruct the traveled portion of a public right-of-way.

(3) Every mobile auto repair business shall comply with the Motor Vehicle Repair Act of 1977, Section 42-9-101, et seq., C.R.S.

(4) Every mobile auto repair business shall, immediately upon arrival at a work site, inspect the damaged vehicle to ensure that no fluids are leaking from the vehicle. If fluids are deemed to be leaking from a damaged vehicle, such leaking shall be deemed a nuisance pursuant to Section 7-26 of this Code.

(5) Under no circumstances may a mobile auto repair business perform mobile body and paint repairs or mobile mechanical repairs on any vehicle in which the manufacturer's identification numbers have been removed or altered. Manufacturer identification includes a vehicle identification number (VIN), a federal motor vehicle safety certification label or other component labels.

(6) Every mobile auto repair business shall be responsible for removing all auto parts, tools, trash, refuse and other materials at the end of each work day.

(7) Every mobile auto repair business shall comply with federal and state laws relating to the transportation and disposal of hazardous waste, air quality control and water quality control.

(8) Under no circumstances may a vehicle that is being serviced by a mobile auto repair business remain immobile for more than ten (10) consecutive days or otherwise be used, made, kept, maintained, operated
or retained in a manner that would constitute a nuisance pursuant to Section 7-21 of this Code. (Ord. 2008-20 §1)

Sec. 6-435. Penalty.

(a) Failure of a mobile auto repair business to comply with the terms of this Article shall be grounds to suspend or revoke its business license or issue a cease and desist order according to Sections 6-11 through 6-14 of this Chapter.

(b) Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. For each day, or portion thereof, during which any violation continues, a person may be cited for a separate civil infraction. (Ord. 2008-20 §1)

Secs. 6-436—6-450. Reserved.

ARTICLE XV

Reserved*

Secs. 6-451—6-500. Reserved.

ARTICLE XVI

Escort Services

Sec. 6-501. Findings.

The City Council adopts this Article on the following findings of fact:

(1) That the business of providing escorts and escort services within the City seriously affects the health, safety and general welfare of the public, specifically with regard to the economic, social and moral well-being of the City, its residents and its visitors;

(2) That entities and individuals operating under the guise of providing escorts and escort services contribute to prostitution within the City and confuse the public as to what is a legitimate business;

(3) That individuals operating under the guise of providing outcall entertainment services for compensation, such as companionship, rub-downs, sensual massage, relaxation services and other nontherapeutic massage, contribute to prostitution within the City and confuse the public as to what is a legitimate business;

(4) That the existence of such businesses and individuals operating within the City constitutes a legitimate need for the exercise of the City's police powers; and

(5) That such businesses must be regulated strictly to ensure the protection of the public health, safety and general welfare. (Ord. 2012-28 §1; Ord. 2015-6, §54)

Sec. 6-502. Purpose.

(a) The City Council declares that this Article is intended to provide for the orderly regulation and licensing of escort and related services within the City by establishing certain minimum standards for the conduct of this type of business in order to protect the health, safety and welfare of the citizens of the City.

(b) The City Council further declares its intent to regulate outcall entertainment services by curtailing prostitution under the guise of such services without de facto prohibiting or curtailing legitimate business or potentially protected expression. The purpose of this Article is to strike a balance between the legitimate ends of the community by:

(1) Imposing an incidental, content-neutral time, place and manner regulating those entities and individuals providing outcall entertainment services without limiting alternative avenues of communication; and

(2) Requiring those entities and individuals providing outcall entertainment services to carry their fair financial share of law enforcement activities related to such outcall entertainment services.

(c) Nothing contained within this Article is intended to supplant or supersede the regulation of massage therapists under Title 12, Article 35.5, C.R.S. (Ord. 2012-28 §1; Ord. 2015-6, §55)

Sec. 6-503. Definitions.

As used in this Article, the following words shall have the following meanings:

*Entertainment location* means a hotel or motel guest room or the guest room of any other public lodging accommodation.

*Escort* means any person who, for a salary, fee, commission, hire or profit, makes himself or herself available to the public for the purpose of accompanying other persons for companionship or provides outcall entertainment for an escort patron for any purpose for compensation.

*Escort patron* means any person who seeks the services of an escort, escort service or escort runner.

*Escort runner* means any person who, for a salary, fee, hire or profit, acts in the capacity of an agent for an escort or escort service by contacting or meeting with escort patrons, whether or not said person is employed by such escort or escort service or by another business or is self-employed.

*Escort service* means any business, agency or person who, for a fee, commission, hire or profit, furnishes or arranges for persons to accompany other persons for companionship or outcall entertainment for any purpose for compensation.

*Local licensing authority* means the City Council.

*Outcall entertainment services* means a visit by an escort at an entertainment location in response to any form of communication, including but not limited to electronic communication, email, internet, telephone or any other means or any other request to entertain a patron at that location, including but not limited to companionship, body rubs, nude rub downs, sensual massage, relaxation services and other nontherapeutic massage, nude dancing or demonstrations, including but not limited to lingerie demonstrations. *Outcall entertainment* shall not include massage therapy as contemplated in 12-35.5-101, *et seq.*, C.R.S., when provided by one authorized to do so under state law.

*Person* means a natural person, partnership, association, company, corporation or organization or a managing agent, servant, officer, partner, owner, operator or employee of any of them.

*Specified criminal act* means any crime of moral turpitude and any criminal offense which is included in the definition of "unlawful sexual behavior" under the Colorado Sexual Offender Registration Act, 16-22-102, C.R.S., or any offense committed in another state or jurisdiction, including but not limited to a military or federal jurisdiction that, if committed in the State, would constitute an offense involving unlawful sexual behavior, or any offense that has a factual basis of one (1) of the offenses specified in the definition of unlawful sexual behavior. Specified criminal act also includes any offense involving solicitation for prostitution, prostitution, patronizing a prostitute, pandering, pimping, prostitute making display, keeping a place of prostitution, public indecency or distribution or possession of obscene materials, and any adult business or massage par-
lor/therapist violations. (Ord. 2012-28 §1; Ord. 2015-6, §56)

Sec. 6-504. License required.

(a) It shall be unlawful for any person to hold oneself out to the public as an escort, accept compensation as an escort or conduct escort services or activities within the City without having first obtained an escort license pursuant to the terms of this Article.

(b) It shall be unlawful for any person to operate or manage an escort service within the City without having first obtained an escort service license pursuant to the terms of this Article.

(c) It shall be unlawful for any person to represent oneself as an escort runner, accept compensation as an escort runner or conduct escort runner services or activities without having first obtained an escort runner license pursuant to the terms of this Article.

(d) Every escort or escort runner must obtain a separate and distinct license for each escort service for which he or she is employed, including self-employment. (Ord. 2012-28 §1)

Sec. 6-505. Application.

(a) All applicants for an escort service license, an escort license or an escort runner license shall file a completed application for such license with the City Clerk on forms to be provided by the City Clerk. Each individual applicant, partner of a partnership, officer or director of a corporation and manager of a limited liability company shall be named in each application form, and each of them shall be photographed and fingerprinted by the Police Department. The applicant shall pay any fees required for the photographs and fingerprints.

(b) Each application for an escort service license, an escort license or an escort runner license shall contain the following information verified by oath or affirmation of the applicant and shall be accompanied by the following documents:

(1) If the applicant is an individual, the individual shall state:

a. The applicant's name or any other names or aliases used by the individual, whether present or past;

b. The applicant's date of birth, place of birth, height, weight, color of eyes and hair;

c. The current residential and business addresses and telephone numbers of the applicant;

d. Each residential and business address of the applicant for the five (5) years immediately preceding the date of the application, and the inclusive dates of each such address;

e. Current state driver's license or government-issued photo identification card showing proof that the applicant is at least eighteen (18) years of age or other proof of lawful presence in the United States.

f. The applicant's business, occupation and employment history for the five (5) years immediately preceding the date of the application.

(2) If the applicant is a partnership, the applicant shall state the partnership's complete name, the names of all partners and whether the partnership is general or limited, and shall provide a copy of the partnership agreement, if any.
(3) If the applicant is a corporation, the applicant shall state the corporation's complete name, the date of its incorporation, evidence that the corporation is in good standing under the statutes of the State or, in the case of a foreign corporation, evidence that it is currently authorized to do business in the State, the names and capacities of all officers and directors and the name of the registered corporate agent and the address of the registered office for service of process.

(4) If the applicant is a limited liability company, limited liability partnership or any other limited liability entity authorized by state law, the applicant shall state the company's complete name, the date of its formation, evidence that the company is in good standing under the statutes of the State or, in the case of a foreign company, evidence that it is currently authorized to do business in the State, and the name of the manager and registered agent and the address of the registered office for service of process and a list of all members of the limited liability entity.

(c) Each license application for an escort services license, an escort license or an escort runner license shall contain the following information verified by oath or affirmation of any individual applicant, any of the other individuals required to be listed in the application or any manager:

(1) The license or permit history for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant has ever had a license, permit or authorization to do business denied, revoked or suspended or had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation or suspension, state the date, the name of the issuing or denying jurisdiction and describe in full the reasons for the denial, revocation or suspension. The applicant shall list any licenses or permits previously or currently held from any other jurisdiction and the name and jurisdiction that issued such other license or permit.

(2) Whether the applicant has been arrested for any criminal act, the nature of the offense, the date of the arrest and the location of the offense.

(3) The present or intended business address and telephone number of the business premises, if any.

(d) Each applicant for an escort services license, an escort license or an escort runner license shall submit a copy of the applicant's criminal history from the State. The Police Department may require the submission of criminal histories from additional states as warranted.

(e) The City Clerk shall not accept any application that is not complete in every detail. If the City Clerk discovers an omission or error, the application shall be rejected and returned to the applicant for completion or correction without further action by the City Clerk. All fees shall be returned with the application. For the purposes of this Article, the date the City Clerk accepts an application that is complete in every detail, including the receipt of the criminal history from the Colorado Bureau of Investigation, shall be considered the filing date.

(f) When a complete application for a license has been accepted for filing, the required individuals have been fingerprinted and photographed and the license fee has been paid, the City Clerk shall transmit the application to the Police Department for investigation of the background of each individual applicant and each of the other individuals required to be listed in the license application, and to investigate the accuracy of all the information submitted as a part of the application. The investigation required by this Section should be completed within ninety (90) days from the date the appli-
cation is submitted to the Police Department. The Police Department shall promptly forward the application and its completed investigation to the City Clerk for administrative review.

(g) An application with completed background investigation shall be administratively approved or denied by the City Clerk. An application shall be approved and a license shall be issued unless the City Clerk finds that one (1) or more of the following is true:

1. That the applicant knowingly made a false statement or knowingly gave false information in connection with the application;

2. That the applicant is under eighteen (18) years of age;

3. That the applicant has been convicted of a specified criminal act or the applicant was arrested for a specified criminal act that was dismissed due to a plea bargain in which the applicant pled guilty to a criminal act in exchange for the dismissal of the specified criminal act;

4. That the escort services license, escort license or escort runner license is to be used for employment in a business or establishment of a business prohibited by local or state law, statute, rule or regulation;

5. That the applicant has had an escort services license, an escort license or an escort runner license revoked or suspended within five (5) years of the date of the current application;

6. That, with respect to a corporation, any officers, directors or stockholders holding over ten percent (10%) of the issued or outstanding capital stock thereof are not of good moral character;

7. That, with respect to a partnership, association or company, any officers or members holding more than ten percent (10%) interest therein are not of good moral character;

8. That the applicant is employed, assisted by or financed in whole or in part by a person who is not of good moral character;

9. That the applicant is a person who is not of good moral character; or

10. That the applicant is a peace officer or an employee of the City.

(h) For the purposes of determining good moral character, the City Clerk may consider the criminal record of all applicants, including but not limited to any conviction or guilty plea to a charge based on acts of dishonesty, fraud, deceit, sexual misconduct or prostitution-related misconduct of any kind, whether or not the acts were committed in this State.

(i) The applicant may present written documentation to the City Clerk regarding his or her criminal history, including but not limited to evidence of mitigating factors, rehabilitation, character references and education achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license. (Ord. 2012-28 §1)

Sec. 6-506. Application fees.

(a) Each applicant, whether an individual, partnership, limited liability company or corporation, shall pay an application processing fee pursuant to a separate resolution setting the City of Black Hawk Fee Schedule at the time of submission of an application to the City Clerk. Such application fee shall be nonrefundable.

(b) Each applicant shall pay an application investigation fee pursuant to a separate resolution setting the City of Black Hawk Fee Sched-
ule for each person who will be investigated as required by this Article. (Ord. 2012-28 §1; Ord. 2015-6, §57)

Sec. 6-507. Appeal of application denial.

(a) In the event that the City Clerk denies a license application, the City Clerk shall prepare written findings of fact stating the reasons or basis for the denial, which may be in the simple form of a letter. A copy of the City Clerk's findings shall be sent by certified mail, return receipt requested, to the address of the applicant as shown in the application within ten (10) days after the date of the City Clerk's denial. The City Clerk's decision to deny a license application shall become a final administrative decision of the City on the twentieth day following the date of the denial unless the applicant files a timely request for appeal to the local licensing authority as provided in this Section.

(b) In the event that the City Clerk denies a license application, an applicant shall have the right to a quasi-judicial hearing before the local licensing authority for the purpose of appealing the City Clerk's administrative decision. Any request for a hearing must be made in writing to the local licensing authority within ten (10) days of the date of the mailing of the City Clerk's written findings and denial of the license application. The hearing shall be conducted within thirty (30) days of the local licensing authority's receipt of the written request for a hearing unless a later date is requested by the applicant.

(c) Upon receipt of a timely request for a hearing, the local licensing authority shall schedule a hearing and notify the applicant of the date, time and place of the hearing. The City may make such notification by telephone, provided that a written notice shall also be mailed or delivered to the applicant at the applicant's address shown in the application. An attorney or other representative may represent an applicant at the hearing. An applicant or the City may request a continuation or postponement of the hearing date.

(d) The local licensing authority shall have the power to administer oaths, issue subpoenas to require the presence of persons and, when necessary, grant continuances. Subpoenas may be issued to require the presence of persons and production of papers, books and records necessary to the determination of any hearing which the local licensing authority conducts. It is unlawful for any person to fail to comply with any subpoena issued by the local licensing authority. A subpoena shall be served in the same manner as a subpoena issued by the District Court of the State. Upon failure of any witness to comply with such subpoena, the City Attorney or the applicant may petition any judge of the Municipal Court of the City, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, requesting that the court, after hearing evidence in support of or contrary to the petition, enter its order compelling the witness to attend and testify or produce books, records or other evidence under penalty of punishment for contempt in case of willful failure to comply with such order of court.

(e) At the hearing, the local licensing authority shall hear and consider such evidence and testimony presented by the City, the applicant or any other witnesses called by the City or the applicant which are relevant to the stated reason and basis for the City Clerk's denial of the license application. The local licensing authority shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross-examination and presentation of relevant documents and other evidence. The hearing shall be recorded. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record.

(f) Not less than thirty (30) days following the conclusion of the hearing, the local licensing authority shall send a written order by cer-
tified mail, return receipt requested, to the applicant at the address as shown on the application. The order shall include findings of fact and a final decision concerning the approval or denial of the application. In the event that the local licensing authority concludes that the application is approved, such approval shall constitute approval by the City Clerk, and the applicant may seek issuance of a license in accordance with this Article.

(g) The order of the local licensing authority made pursuant to this Section shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). For purposes of any appeal, the local licensing authority's decision shall be final upon the earlier of the date of the applicant's receipt of the order or four (4) days following the date of mailing. (Ord. 2012-28 §1; Ord. 2015-6, §58)

Sec. 6-508. License term.

An escort services license, escort license or escort runner license shall be valid for a period of one (1) year, unless revoked or suspended. (Ord. 2012-28 §1)

Sec. 6-509. License fee.

The annual license fee for any license issued pursuant to this Article shall be payable to the City Clerk at the time an initial license application is filed or at the time a renewal application is filed. The license fee is in addition to any application fee required by this Article, and pursuant to a separate resolution setting the City of Black Hawk Fee Schedule. The license fee shall be nonrefundable unless an application is denied. (Ord. 2012-28 §1; Ord. 2015-6, §59)

Sec. 6-510. License renewal.

(a) As a prerequisite to renewal of an existing license issued pursuant to this Article, the applicant must pay the annual license fee and file a completed renewal application with the City Clerk not less than forty-five (45) days prior to the date of the license expiration. The City Clerk may waive the timely filing requirement where the licensee demonstrates in writing that the failure to timely file is not solely the result of the licensee's negligence; provided, however, that no renewal application shall be accepted by the City Clerk from any licensee after the license for which renewal is requested has expired. The City Clerk may administratively renew a license.

(b) A license that is under suspension may be renewed in accordance with this Section provided that such renewal shall not modify, alter, terminate or shorten the period or term of the suspension. The suspension of a license shall not extend the term of the license or otherwise relieve the licensee from timely seeking renewal of the license in accordance with this Section. (Ord. 2012-28 §1)

Sec. 6-511. Denial of renewal, suspension or revocation of license.

(a) The local licensing authority may deny renewal, suspend, revoke, modify or place conditions on the continuation of an escort services license, escort license or escort runner license upon a finding that the licensee:

(1) Has violated any of the provisions of this Article;

(2) Has engaged in a specified criminal act; or

(3) Has allowed or has permitted any other person to violate any of the provisions of this Article or engage in a specified criminal act.

(b) A licensee shall be entitled to a quasi-judicial hearing before the local licensing authority if the City seeks to deny renewal, suspend, revoke, modify or place conditions on a license based on a violation of this Article.

(1) When there is probable cause to believe that a licensee has violated or permitted a violation of this Article or other laws to
occur, the City Attorney may file a written complaint with the local licensing authority setting forth the circumstances of the violation.

(2) The local licensing authority shall send a copy of the complaint by certified mail, return receipt requested, to the licensee at the address as shown on the license application, together with a notice to appear before the local licensing authority for the purpose of a hearing to be conducted at a specified date and time and at a place designated in the notice to show cause why the licensee's license should not be suspended. Such hearing shall be held on a date not less than thirty (30) days following the date of mailing of the complaint and notice to the licensee. A licensee may be represented at the hearing by an attorney or other representative.

(c) At the hearing, the local licensing authority shall hear and consider such evidence and testimony presented by the Police Department or other enforcement officers, the City, the licensee or any other witnesses called by the City or the licensee, which are relevant to the violations alleged in the complaint. The local licensing authority shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross-examination and presentation of relevant documents and other evidence. The hearing shall be recorded. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record. Subpoenas may be issued in accordance with the provisions of Section 6-507 of this Article.

(d) The local licensing authority shall make written findings of fact from the statements and evidence offered and shall reach a conclusion as to whether the alleged violations occurred. Such written findings and conclusion shall be prepared and issued not less than thirty (30) days following the conclusion of the hearing. If the local licensing authority determines that a violation did occur which warrants denial of renewal, suspension, revocation, modification or conditioning of the license pursuant to this Section, it shall also issue an order denying renewal, suspending, revoking, modifying or placing conditions on the license. A copy of the findings, conclusion and order shall be hand delivered or mailed to the licensee by certified mail, return receipt requested, at the address as shown on the license application.

(e) The order of the local licensing authority shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). For purposes of any appeal to the District Court, the local licensing authority's decision shall be final upon the earlier of the date of the applicant's receipt of the findings, conclusion and order or four (4) days following the date of mailing of the local licensing authority's decision.

(f) In the event of suspension, revocation, modification, conditioning or cessation of business, no portion of the license fee shall be refunded. Any person whose license is suspended, revoked, modified or conditioned under this Section shall be required to pay the costs incurred by the City to enforce this Article, including but not limited to attorneys' fees, expert witness and/or consultant fees. (Ord. 2012-28 §1; Ord. 2015-6, §60)

Sec. 6-512. Nontransferability of license.

A license issued under this Article shall not be transferable. (Ord. 2012-28 §1)

Sec. 6-513. Display of license.

(a) Every licensee shall display a valid license in a conspicuous place within the escort service or other place of business so it may be readily seen by persons entering the premises. Every licensed escort or licensed escort runner shall carry or have readily available a City escort photographic identification card at all times
while in or upon the licensed premises or while acting as an escort or escort runner, whether or not at an entertainment location, and shall display it upon the demand of a peace officer or a designee of the City Clerk.

(b) The photographic identification card shall at all times be the property of the City and must be surrendered upon suspension, revocation, denial of renewal or voluntary termination of the license. (Ord. 2012-28 §1)

Sec. 6-514. Unlawful acts.

(a) It is unlawful for any escort, escort runner or escort patron during or in connection with the provision of escort services to:

(1) Knowingly expose his or her genitals, anus, buttocks, pubic region or female breasts;

(2) Touch, or encourage, facilitate or aid another in touching, the genitals, anus, buttocks, pubic region or female breasts of any person, even if completely and opaquely covered;

(3) Engage in, encourage or request or permit any person to engage in, encourage or request acts of anal intercourse, cunnilingus, fellatio, masturbation or sexual intercourse as such terms are used in Section 10-104 of this Code; or

(4) Solicit any fee, gratuity or tip from any escort patron in addition to the basic fee agreed upon.

(b) It shall be unlawful for any person:

(1) To work, to employ, to allow or to permit any person to act as an escort or escort runner if the person is not in possession of a valid City escort photographic identification card and license issued pursuant to this Article;

(2) To interfere with or refuse to permit any inspection of the premises of an escort service by the Police Department or agent of the City acting in compliance with Section 6-515 below;

(3) To allow the provision or procurement of any escort service to or for any person under the age of eighteen (18) years without the written consent of that person's parent or legal guardian; or

(4) To permit any person under the age of eighteen (18) years to be employed in an escort service. If any person who, in fact, is not eighteen (18) years of age exhibits fraudulent proof of age, reasonable reliance on such fraudulent proof of age may constitute an affirmative defense to any actions seeking the revocation or suspension of any license issued under this Article or to any criminal action arising because a person is not at least eighteen (18) years of age.

(c) For the purpose of this Section, in connection with means any act which furthers, advances, promotes or has a continuity of purpose, and may occur before, during or after the provision of an escort service. (Ord. 2012-28 §1)

Sec. 6-515. Right of entry.

The Police Department or any authorized agent of the City may conduct routine inspections of escort services to ensure compliance with the requirements of this Article. (Ord. 2012-28 §1)

Sec. 6-516. Duties of escort service.

(a) Every escort service shall refer all prospective escorts or escort runners to the City Clerk for licensing. Upon termination of employment of any escort or escort runner with such escort service, the escort service shall notify the City Clerk of such termination within five (5) days.
(b) The escort service shall provide to each escort patron a written contract for services as required by Section 12-25.5-112, C.R.S. The contract shall clearly state the names and addresses of the escort and customer, the type of services to be performed, the length of time such services shall be performed, the total amount of money such services will cost the escort patron and any special terms or conditions relating to the services to be performed. The contract shall include, printed in bold block letters and no smaller than the impression of twelve-point type, the following statement:

**Warning:**

Prostitution is illegal in the State of Colorado. Any person who performs or offers or agrees to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with another person being not his or her spouse in exchange for money or other thing of value commits prostitution. Both parties to an act of prostitution may be punished by both fine and imprisonment. No act of prostitution shall be performed in relation to the services for which you have contracted. This contract is a public record and a copy of it will be transmitted to the City of Black Hawk City Clerk.

(c) Each contract shall be numbered and utilized in numerical sequence by the escort service. The contract shall be signed by the escort patron and a copy furnished to him or her.

(d) The escort service shall also retain copies of all such contracts, and one (1) copy of each such contract executed in any calendar month shall be transmitted by the escort service to the City Clerk no later than ten (10) days after the last day of such month. The City Clerk shall treat such contracts as open public records. (Ord. 2012-28 §1)

**Sec. 6-517. Duties of escort.**

(a) In the event an escort is not employed by an escort service or is otherwise self-employed, the escort shall provide each escort patron with a written contract for services as required in Subsections 6-516(b) through (d) above.

(b) Every escort shall maintain in a ledger accurate and detailed records of all visits with escort patrons for companionship and visits to entertainment locations.

(c) The records shall include:

1. The date of the visit;
2. The name, if any, address and room number, if applicable, of the entertainment location;
3. The type of entertainment or service provided;
4. The name of the escort patron who was entertained; provided, however, that if there was more than one (1) escort patron entertained, only the name of the patron who paid the fee to the escort need be recorded in the ledger;
5. The amount of money the services cost the escort patron; and
6. Any special terms or conditions relating to the services performed.

(d) Each escort shall, upon request by the City Clerk, make his or her ledger available to the City for inspection. (Ord. 2012-28 §1)

**Sec. 6-518. Penalty.**

(a) Any person violating any provision of this Article shall be punished pursuant to Article IV of Chapter 1 of this Code.

(b) The penalties provided in this Section shall not be affected by the penalties provided in any other section of this Article, but shall be construed to be in addition to any other penalties. (Ord. 2012-28 §1)
Sec. 6-519. Effective date.

All persons required by the terms of this Article to be licensed shall submit a completed license application to the City Clerk within thirty (30) days of the effective date of the ordinance codified herein. (Ord. 2012-28 §1)

Secs. 6-520—6-530. Reserved.

ARTICLE XVII
Entertainment Districts

Sec. 6-531. Purpose.

It is the purpose of this Article for the City to exercise its local option to allow common consumption areas in the City by establishing an entertainment district as provided in Section 44-3-301(11), C.R.S. The standards adopted herein shall be considered in addition to all other standards applicable to the issuances of licenses under the Colorado Liquor Code and this Chapter. (Ord. 2012-31 §1; Ord. 2018-20 §8)

Sec. 6-532. Authority.

(a) The City Council, acting in its capacity as the local licensing authority, shall be authorized to: certify and decertify promotional associations; designate the location, size, security and hours of operation of common consumption areas; and allow attachment of licensed premises to common consumption areas consistent with this Article and the provisions included herein.

(b) The local licensing authority shall have the authority to impose reasonable conditions on the licensing of common consumption areas, the certification of promotional associations and the attachment of licensed premises to common consumption areas. (Ord. 2012-31 §1; Ord. 2015-6, §61)

Sec. 6-533. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Common consumption area shall mean an area designed as a common area located within a designated entertainment district and approved by the local licensing authority, that uses physical barriers to close the areas to motor vehicle traffic and limit pedestrian access.

Entertainment district shall mean an area within the City that is designated as an entertainment district of a size no more than one hundred (100) acres and containing at least twenty thousand (20,000) square feet of premises licensed as a tavern, hotel and restaurant, brew pub or vintner's restaurant at the time the district is created.

Local licensing authority means, for the purposes of this Article, the City Council.

Promotional association shall mean an association that is incorporated within the State that organizes and promotes entertainment activities within a common consumption area and is organized or authorized by two (2) or more people or legal entities that own or lease property within an entertainment district. (Ord. 2012-31 §1; Ord. 2015-6, §62)

Sec. 6-534. Creation of Entertainment District.

In order to exercise the City's local option to allow common consumption areas in the City and to effectuate the purposes and intent of Section 44-3-301(11), C.R.S., there is hereby established and designated the Entertainment District, whose boundaries include all land, inclusive of rights-of-way, located on and adja-
cent to Main Street and Miners’ Mesa Drive, as more particularly described in Exhibit A to the ordinance codified herein. Properties may be included or excluded from the Entertainment District by resolution of the City Council. By establishing the Entertainment District, the City authorizes the licensing of designated common consumption areas in which alcohol beverages may be sold and consumed subject to the requirements of this Article, this Code and the Colorado Liquor Code. (Ord. 2012-31 §1; Ord. 2015-6, §63; Ord. 2018-20 §9)

Note: Exhibit A is not set out herein, but is on file with the City.

Sec. 6-535. Application for certifying a promotional association.

(a) Certification of a promotional association shall be applied for in a manner consistent with this Section as determined by the local licensing authority and include the following minimum information:

(1) A copy of the articles of incorporation and bylaws and a list of all directors and officers of the promotional association. A member of each licensed premises shall serve as one (1) of the directors on the board of the promotional association which shall have at least two (2) licensed premises attached to the common consumption area.

(2) A detailed map of the proposed common consumption area, including location of physical barriers, entrances and exits, location of attached licensed premises and identification of licensed premises that are adjacent but not to be attached to the common consumption area. The size of the common consumption area shall not exceed the area approved as the Entertainment District within which the common consumption area is located, but may be a smaller area within the Entertainment District at any time, provided that the new area is clearly delineated using physical barriers to close the area to motor vehicle traffic and to limit pedestrian access.

(3) A security plan, including evidence of training and approval of personnel, a detailed description of security arrangements and the approximate location of security personnel within the common consumption area during operating hours.

(4) A list of dates and hours of operation of the common consumption area, including any request for extended hours between 2:00 a.m. and 7:00 a.m.

(5) Documentation showing possession of the common consumption area by the promotional association.

(6) A list of the attached licensees, of which there will be a minimum of two (2), listing the following information: liquor license number, a list of any past liquor violations and a copy of any operational agreements.

(7) An insurance certificate of general liability and liquor liability insurance naming the City as an additional insured in a minimum amount of one million dollars ($1,000,000.00).

(8) Documentation of how the application addresses the reasonable requirements of the neighborhood and the desires of the adult inhabitants as evidenced by petitions, written testimony or otherwise.

(9) An application fee pursuant to a separate resolution setting the City of Black Hawk Fee Schedule.

(b) Upon approval of a certification by the local licensing authority, the terms and conditions of the approval shall remain effective until and unless a revised or amended application is submitted to the local licensing authority and
approved using the same procedures under which the original application was approved. (Ord. 2012-31 §1; Ord. 2015-6, §64; Ord. 2015-14, §1)

Sec. 6-536. Application for recertification of a promotional association.

(a) A certified promotional association shall apply for recertification by January 31 of each year in a manner consistent with the provisions of this Article and include, but not be limited to:

(1) A copy of any changes to the articles of incorporation, bylaws and/or the directors and officers of the promotional association.

(2) All items noted in Paragraphs 6-535(a)(2) through 6-535(a)(9) above.

(b) Failure to submit the items required by this Section, which will be known as the annual report, shall be grounds for the refusal to recertify or the decertification of a promotional association.

(c) The City Clerk is authorized to administratively approve the recertification of a promotional association if, following the City Clerk’s review of the information required to be submitted by this Section, there are no grounds for refusing to recertify or decertifying the promotional association. (Ord. 2012-31 §1; Ord. 2016-3 §1)

Sec. 6-537. Application for attachment to a common consumption area.

(a) Once certified by the local licensing authority as a promotional association, the association may operate a common consumption area within an entertainment district and authorize the attachment of a licensed premises to the common consumption area, subject to approval by the local licensing authority. Application for attachment of a licensed premises to the common consumption area by a certified promotional association shall be made in a manner consistent with the provisions of this Article and include, but not be limited to, the following information:

(1) Authorization for attachment from the certified promotional association.

(2) Name of the representative from the licensed premises proposed for attachment who would serve as an additional director on the board of the certified promotional association.

(3) A detailed map of the common consumption area, including location of physical barriers, entrances and exits, location of attached licensed premises, identification of licensed premises that are adjacent but not to be attached to the common consumption area and approximate location of security personnel.

(4) An application fee pursuant to a separate resolution setting the City of Black Hawk Fee Schedule.

(b) The local licensing authority may refuse to authorize, refuse to reauthorize or may deauthorize attachment if:

(1) The licensed premises to be attached is not within or on the perimeter of the common consumption area;

(2) The licensee fails to obtain or retain authority to attach to the common consumption area from the certified promotional association;

(3) The licensee fails to establish that the licensed premises and the common consumption area can be operated without violating this Code, the Colorado Liquor Code or creating a safety risk to the neighborhood; or
(4) The licensee violates any provision contained in Section 44-3-910, C.R.S. (Ord. 2012-31 §1; Ord. 2015-6, §65; Ord. 2018-20 §10)

Sec. 6-538. Operation of common consumption areas.

(a) A promotional association or attached licensed premises shall not:

(1) Employ a person to serve alcohol beverages or provide security within the common consumption area unless the server has completed the server and seller training program established by the director of the Liquor Enforcement Division of the Department of Revenue;

(2) Sell or provide an alcohol beverage to a customer for consumption within the common consumption area but not within the licensed premises in a container that is larger than sixteen (16) ounces;

(3) Sell or provide any alcohol beverage to a customer for consumption within the common consumption area but within the licensed premises unless the container is disposable and contains the name of the vendor in at least twenty-four-point font;

(4) Permit customers to leave the licensed premises with an alcohol beverage unless the beverage container complies with Paragraphs (2) and (3) of this Subsection (a);

(5) Operate the common consumption area in an area that exceeds the maximum authorized by the local licensing authority or the Colorado Liquor Code;

(6) Sell, serve, dispose of, exchange, or deliver, or permit the sale, serving, giving, or procuring of, an alcohol beverage to a visibly intoxicated person or to a known habitual drunkard;

(7) Sell, serve, dispose of, exchange, or deliver, or permit the sale, serving, or giving of an alcohol beverage to a person under twenty-one (21) years of age; or

(8) Permit a visibly intoxicated person to loiter within the common consumption area.

(b) The promotional association shall promptly remove all alcohol beverages from the common consumption area at the end of the hours of operation.

(c) A person shall not consume alcohol within the common consumption area unless it was purchased from an attached licensed premises.

(d) The promotional association is authorized to serve alcohol beverages and customers are authorized to consume alcohol beverages as follows:

(1) Between 7:00 a.m. and 2:00 a.m. within the common consumption area and the attached licensed premises; and

(2) Between 2:00 a.m. and 7:00 a.m. within the common consumption area and the attached licensed premises if approved by the local licensing authority pursuant to an application seeking approval of such extended hours in accordance with Section 6-535(a)(4) of the Black Hawk Municipal Code.

(e) This Section does not apply to a special event permit under the City of Black Hawk Municipal Code or the holder thereof unless the permit holder desires to use an existing common consumption area and agrees in writing to the requirements of this Section and the local licensing authority concerning the common consumption area. (Ord. 2012-31 §1; Ord. 2015-14, §2)
Sec. 6-539. Violations.

Noncompliance with any provision of this Article shall be deemed a violation of this Code. Violations of this Article, this Code or the Colorado Liquor Code shall be cause for suspension or revocation of the licensed premises, the common consumption area license or decertification of the promotional association and may be subject to other enforcement provisions set forth in this Code. (Ord. 2012-31 §1)

Sec. 6-540. Fees.

Application fees shall be set pursuant to a separate resolution of the City Council. (Ord. 2012-31 §1; Ord. 2015-6, §66)

Secs. 6-541—6-550. Reserved.

ARTICLE XVIII

Retail Marijuana Establishments

Sec. 6-551. Findings.

The City Council makes the following legislative findings:

(a) The City Council finds that on November 6, 2012, the voters of the State of Colorado approved Amendment 64. Amendment 64 added § 16 of Article 18 to the Colorado Constitution and legalized the possession, use, display, purchase, transport, transfer, and consumption of marijuana accessories or one (1) ounce or less of marijuana by persons twenty-one (21) years of age or older ("adult use marijuana") within the State of Colorado (as opposed to federal law).

(b) The City Council finds and determines that the enactment by the Colorado Legislature of the Colorado Retail Marijuana Code, C.R.S. § 44-12-101, et seq., clarifies Colorado law regarding the scope and extent of Amendment 64 to the Colorado Constitution.

(c) The City Council finds and determines that the Colorado Retail Marijuana Code now provides a statutory framework for the regulation of retail marijuana establishments, including retail marijuana stores.

(d) The City Council finds and determines that by requiring that retail marijuana businesses be operated in a manner that minimizes potential health and safety risks, it mitigates the negative impacts that retail marijuana establishments might have on surrounding properties and persons.

(e) The City Council finds and determines that through this article it intends to establish a nondiscriminatory mechanism by which the City can control, through appropriate regulation, the location and operation of retail marijuana establishments within the City.

(f) The City Council recognizes and affirms the protections afforded by Article XVIII, Section 16 of the Colorado Constitution and desires to affirm the ability of persons twenty-one (21) years of age and older the protections of Article XVIII, Section 16 of the Colorado Constitution, the Retail Marijuana Code, and all associated regulations as the same may be amended from time to time. (Ord. 2013-42 §1; Ord. 2014-10 §1; Ord. 2018-20 §11)

Sec. 6-552. Purpose.

The purpose of this Article is to implement the provisions of the Colorado Retail Marijuana Code, C.R.S. § 44-12-101, et seq., which authorizes the licensing and regulation of retail marijuana businesses and affords local government the option to determine whether or not to allow retail marijuana businesses within their respective jurisdictions and to adopt licensing
requirements that are supplemental to or more restrictive than the requirements set forth in State law. (Ord. 2013-42 §1; Ord. 2014-10 §1; Ord. 2018-20 §12)

Sec. 6-553. Incorporation of State law.

The provisions of the Colorado Retail Marijuana Code, and any rules and regulations promulgated thereunder as the same may be amended from time to time, are incorporated herein by reference except to the extent that more restrictive or additional regulations are set forth in this Article. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-554. Authority.

The City Council hereby finds, determines and declares that it has the power to adopt this Article pursuant to:

(1) Article XVIII, Section 16 of the Colorado Constitution;

(2) The Colorado Retail Marijuana Code, C.R.S. § 44-12-101, et seq.;

(3) The Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.;

(4) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);

(5) Section 31-15-103, C.R.S. (concerning municipal police powers);

(6) Section 31-15-401, C.R.S. (concerning municipal police powers);


Sec. 6-555. Definitions.

(a) For purposes of this Article, the following terms shall have the following meanings:

Applicant means a person twenty-one (21) years of age or older who has submitted an application for a license or renewal of a license issued pursuant to this Article. If the applicant is an entity and not a natural person, applicant shall include all persons who are the members, managers, officers and directors of such entity.

Colorado Medical Marijuana Code means Article 12 of Title 44, Colorado Revised Statutes.

Consumer means a person twenty-one (21) years of age or older who purchases marijuana or marijuana products for personal use by a person twenty-one (21) years of age or older, but not for resale to others.

Controlling beneficial owner shall have the same meaning as provided in the Colorado Retail Marijuana Code and any rules and regulations that may be promulgated by the Colorado Department of Revenue.

Cultivation or cultivate means the process by which a person grows a marijuana plant.

Dual operation means a business that operates as both a licensed medical marijuana business and a licensed retail marijuana establishment.

Good cause (for the purpose of refusing or denying a license renewal under this Article) means: (1) the licensee has violated, does not meet, or has failed to comply with any of the terms, conditions or provisions of this Article and any rule and regulation promulgated pursuant to this Article; (2) the licensee has failed to comply with any special terms or conditions that were placed on its license at the time the license was issued,
or that were placed on its license in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings; or (3) the licensee's retail marijuana store has been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the retail marijuana store is located. Evidence to support such a finding can include: (i) a continuing pattern of offenses against the public peace, as defined in Article VII of Chapter 10 of the Black Hawk Municipal Code; (ii) a continuing pattern of drug-related criminal conduct within the premises of the retail marijuana store or in the immediate area surrounding the retail marijuana store arising out of the operation of the establishment; or (iii) a continuing pattern of criminal conduct directly related to or arising from the operation of the retail marijuana store.

_Industrial hemp_ means the plant of the genus cannabis and any part of such plant, whether growing or not, with a Delta-9 tetrahydrocannabinol concentration that does not exceed three-tenths percent on a dry weight basis.

_License_ means a document issued by the City officially authorizing an applicant to operate a retail marijuana store pursuant to this Article.

_Licensee_ means the person to whom a license has been issued pursuant to this Article.

_Licensed premises_ means the premises specified in an application for a license under this Article, which is owned or in possession of the licensee and within which the licensee is authorized to distribute or sell retail marijuana or retail marijuana products in accordance with State and local law.

_Local licensing authority_ means the City Council of the City of Black Hawk.

_Marijuana_ means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. _Marijuana_ does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

_Marijuana accessories_ means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

_Medical marijuana business_ means a medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer as defined in the Colorado Medical Marijuana Code.

_Person_ means a natural person, partnership, association, company, corporation, limited liability company or organization.

_Retail marijuana_ means marijuana that is cultivated, manufactured, distributed or sold by a licensed retail marijuana establishment.

_Retail marijuana cultivation facility_ means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana prod-
uct manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

_Retail marijuana establishment_ means a retail marijuana store, a retail marijuana cultivation facility, or a retail marijuana products manufacturing operation.

_Retail marijuana product manufacturing facility_ means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

_Retail marijuana products_ means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients that are intended for use or consumption, such as but not limited to, edible products, ointments and tinctures.

_Retail marijuana store_ means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

_Retail marijuana testing facility_ means an entity licensed by the City and State of Colorado to analyze and certify the safety and potency of marijuana.

_State licensing authority_ means the authority created by the Colorado Department of Revenue for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, sale and testing of retail marijuana in the State of Colorado pursuant to C.R.S. § 44-12-201.

(b) In addition to the definitions provided in Subsection (a) hereof, other terms used in this Article shall have the meaning ascribed to them in Article XVIII, § 16 of the Colorado Constitution, or the Colorado Retail Marijuana Code, and such definitions are hereby incorporated into this Article by reference. (Ord. 2013-42 §1; Ord. 2014-10 §1; Ord. 2018-20 §14; Ord. 2019-28 §1)

Sec. 6-556. License required for operation of a retail marijuana establishment.

The City hereby authorizes the operation of retail marijuana establishments in the City as set forth in this Article. It shall be unlawful for any person to establish or operate a retail marijuana establishment in the City without first having obtained a license for such business from the local licensing authority. Pursuant to the provisions of this Article XVIII of Chapter 6, the City hereby authorizes only the licensing of retail marijuana stores as the same are defined herein and by State law. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this Section. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-557. Requirements of application for license; payment of application fee; denial of license.

(a) A person seeking a license issued pursuant to this Article shall submit an application to the local licensing authority. At the time of application, each applicant shall pay a nonrefundable application fee to the City in an amount to be determined by the City by separate resolution to defray the costs incurred by the City for costs including but not limited to inspection, administration, and enforcement of retail marijuana stores. In addition, the applicant shall present one (1) of the following forms of identification:

(1) An operator's, chauffer's or similar type of driver's license issued by any state within the United States or a U.S. territory;
(2) An identification card, issued by any state for purpose of proving age using requirements similar to those in C.R.S. §§ 42-2-302 and 42-2-303;

(3) A United States military identification card;

(4) A valid passport; or

(5) An enrollment card issued by the government authority of a Federally recognized tribe located in the State of Colorado.

(b) The applicant shall also provide the following information on a form approved by, or acceptable to the City, which information shall be required for the applicant, and all persons having a ten percent (10%) or more financial interest in the retail marijuana store that is the subject of the application or, if the applicant is an entity, having a ten percent (10%) or more financial interest in the entity:

(1) Name, address, date of birth;

(2) Suitable evidence of proof of lawful presence, residence, if applicable, and good character and reputation that the City may request;

(3) An acknowledgment and consent that the City will conduct a background investigation, including a criminal history check, and that the City will be entitled to full and complete disclosure of all financial records of the retail marijuana store, including records of deposit, withdrawals, balances and loans;

(4) If the applicant is a business entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status, and proof of registration with, or a certificate of good standing from, the Colorado Secretary of State, as applicable;

(5) The name and complete address of the proposed retail marijuana store, including the facilities to be used in furtherance of such business, whether or not such facilities are, or are planned to be, within the territorial limits of the City;

(6) If the applicant is not the owner of the proposed licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a retail marijuana store;

(7) A copy of any deed, lease, contract or other document reflecting the right of the applicant to possess the proposed licensed premises along with the conditions of occupancy of the premises;

(8) Evidence of a valid sales tax license for the business;

(9) If the retail marijuana store will be providing retail marijuana products in edible form, evidence of at a minimum a pending application for any food establishment license or permit that may be required by the State;

(10) A "to scale" diagram of the premises, showing, without limitation, a site plan, building layout, all entry ways and exits to the marijuana store, loading zones and all areas in which retail marijuana will be stored or dispensed;

(11) A comprehensive business operation plan for the retail marijuana store which shall contain, without limitation, the following:

a. A copy of the Articles of Incorporation or Partnership/Operating Agreement for the licensee's business entity;

b. A security plan meeting the requirements of Section 6-574 of this Article;
c. A description by category of all products to be sold;

d. A signage plan that is in compliance with all applicable requirements of this Article and other applicable provisions of the Black Hawk Municipal Code, as well as the Colorado Retail Marijuana Code and all rules and regulations promulgated thereunder;

e. A plan for the disposal of marijuana and related byproducts; and

f. Minimum hours of operation consistent with Section 6-572 herein.

(12) Any additional information that the local licensing authority reasonably determines to be necessary in connection with the investigation and review of the application.

(c) The applicant shall verify the truthfulness of the information required by this Section by the applicant's signature on the application.

(d) A license issued pursuant to this Article does not eliminate the need for the licensee to obtain other required permits or licenses related to the operation of the retail marijuana store, including, without limitation, a license from the State licensing authority and any development approvals or building permits required by this Article and any other applicable provisions of the Black Hawk Municipal Code.

(e) Upon receipt of a completed application, the local licensing authority shall circulate the application to all affected departments of the City to determine whether the application is in full compliance with all applicable laws, rules and regulations.

(f) Upon receipt of an application for a new license, the local licensing authority shall schedule a public hearing on the application to be held not less than thirty (30) days after the date of the completed application. The local licensing authority shall cause a notice of such hearing to be posted in a conspicuous place upon the proposed licensed premises and published in a newspaper of general circulation within the City not less than ten (10) days prior to the hearing. Such posted notice given by posting shall include a sign of suitable material, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters of not less than one (1) inch in height. Both the posted and the published notice shall state the type of license applied for, the date of the hearing, the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application.

(g) Not less than five (5) days prior to the date of the public hearing for a new license, the local licensing authority shall cause its preliminary findings based on its investigation to be known in writing to the applicant and other parties in interest. The local licensing authority shall deny any application that does not meet the requirements of this Article. The local licensing authority shall also deny any application that contains any false, misleading or incomplete information. The local licensing authority shall also deny or refuse to issue a license for good cause. Denial of an application for a license shall not be subject to further administrative review but only to review by a court of competent jurisdiction.

(h) Before entering a decision approving or denying the application for a local license, the local licensing authority may consider, except where this Article specifically provides otherwise, the facts and evidence adduced as a result of its investigation, as well as any other facts pertinent to the type of license for which application has been made, including the number, type and availability of retail marijuana establishments located in or near the premises under consideration, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.
The local licensing authority shall issue its decision within ninety (90) days of the receipt of the complete license application. Such decision shall be by resolution and shall state the reasons for the decision. The resolution shall be sent via certified mail to the State licensing authority and the applicant at the address shown in the application.

(i) The City shall, prior to issuance of the license, perform an inspection of the proposed licensed premises to determine compliance with any applicable requirements of this Article or other applicable requirements of the Black Hawk Municipal Code. (Ord. 2013-42 §1; Ord. 2014-10 §1; Ord. 2015-5 §2; Ord. 2017-27 §1; Ord. 2019-16 §§1, 2)

Sec. 6-558. Retail marijuana stores.

(a) A licensed retail marijuana store may sell up to one (1) ounce of retail marijuana or its equivalent in retail marijuana concentrate or retail marijuana products to persons twenty-one (21) years of age or older during a single sales transaction.

(b) The following forms of identification may be accepted for purposes of determining Colorado residency: a valid State of Colorado driver's license; a valid State of Colorado identification card; or any other valid government-issued picture identification that demonstrates that the holder of the identification is a Colorado resident.

(c) The retail marijuana offered for sale and distribution must be packaged and labeled in accordance with State law.

(d) From January 1, 2014 to September 30, 2014, a retail marijuana store licensee shall only sell retail marijuana that was grown in its commonly-owned retail marijuana cultivation facility and subsequently purchased or transferred from the cultivation, with the following exceptions:

(1) A retail marijuana store licensee may purchase not more than thirty percent (30%) of its total on-hand retail marijuana inventory, in aggregate, from other retail marijuana establishments with which it does not share common ownership.

(2) A retail marijuana store licensee may sell not more than thirty percent (30%) of its total on-hand retail marijuana inventory, in aggregate, to other retail marijuana establishments with which it does not share common ownership.

(3) For purposes of calculating the percentage limitations detailed in this subpart (d), the licensee shall use the total weight of its on-hand inventory at the end of the month preceding the purchase.

(e) Retail marijuana store licensees are prohibited from selling retail marijuana or retail marijuana products over the internet.

(f) Retail marijuana store licensees are prohibited from selling or giving away any consumable product that is not a retail marijuana product, including but not limited to cigarettes or tobacco products, alcohol beverages, and food products other than non-alcohol beverages that are not retail marijuana products.

(g) Retail marijuana store licensees shall be open for business according to the minimum hours of operation set forth in the licensee's business operation plan and consistent with Section 6-572 herein. (Ord. 2013-42 §1; Ord. 2014-10 §1; Ord. 2017-27 §2; Ord. 2019-16 §3)

Sec. 6-559. Retail marijuana products manufacturer facilities.

Retail marijuana products manufacturer facilities are prohibited in the City. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-560. Retail marijuana cultivation facilities.

Retail marijuana cultivation facilities are prohibited in the City. (Ord. 2013-42 §1; Ord. 2014-10 §1)
Sec. 6-561. Retail marijuana testing facilities.

Retail marijuana testing facilities are prohibited in the City. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-562. Dual operations.

Dual operations are prohibited in the City. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-563. Location criteria; limitation on number of retail marijuana stores.

Prior to the issuance of a license for a retail marijuana store, the local licensing authority shall determine whether the proposed location of the retail marijuana store complies with the requirements of this Section. Failure to comply with the requirements of this Section shall preclude issuance of a license.

(a) No retail marijuana store shall be located except within that one-block portion of the History Appreciation Recreation Destination (HARD) District identified by the street addresses of 211 Gregory Street, 221 Gregory Street, 231 Gregory Street, and 241 Gregory Street.

(b) Each retail marijuana store shall be operated from a permanent location. No retail marijuana store shall be permitted to operate from a moveable, mobile or transitory location.

(c) The suitability of a location for a retail marijuana store shall be determined at the time of the issuance of the first license for such business. The fact that changes in the neighborhood that occur after the issuance of the first license might render the site unsuitable for a retail marijuana store under this Section shall not be grounds to suspend, revoke or refuse to renew the license for such business so long as the license for the business remains in effect.

(d) In addition to the location limitations set forth herein, no new retail marijuana store application shall be accepted for filing in the event one (1) retail marijuana store is already licensed as of the date of the proposed new application. (Ord. 2013-42 §1; Ord. 2014-10 §1; Ord. 2019-8 §1)

Sec. 6-564. Persons prohibited as licensees and employees.

(a) No license shall be issued to, held by, or renewed by any of the following:

(1) Any person until all applicable fees have been paid;

(2) Any person who is not of good moral character satisfactory to the local licensing authority;

(3) Any corporation, any of whose officers, directors or stockholders are not of good moral character satisfactory to the local licensing authority;

(4) Any partnership, association or company, any of whose officers are not of good moral character satisfactory to the local licensing authority;

(5) Any person employing, assisted by, or financed in whole or in part by any other person who is not of good character and reputation satisfactory to the local licensing authority;

(6) Any sheriff, deputy sheriff, police officer, prosecuting officer, and State or local licensing authority or any of its members, inspectors or employees;

(7) Any natural person under twenty-one (21) years of age;

(8) Any person who has discharged a sentence for a felony conviction within the past five (5) years;
(9) Any person who, at any time, has been convicted of a felony for drug possession, distribution or use, unless such felony drug charge was based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for the license;

(10) Any entity whose directors, shareholders, partners or other persons having a financial interest in said entity do not meet the criteria set forth above;

(11) Any person who employs another person at a retail marijuana store who has not submitted fingerprints for a criminal record history check or whose criminal record history check reveals the employee is ineligible; or

(12) Any person who has made a false, misleading or fraudulent statement on his or her application.

(b) No licensee shall employ or contract with any person to perform work functions directly related to the possession, cultivation, dispensing, selling, serving or delivering of marijuana for a licensed retail marijuana store, any of the following:

(1) Any person who is not of good moral character satisfactory to the local licensing authority;

(2) Any person who is under twenty-one (21) years of age;

(3) Any person who has discharged a sentence for a felony conviction within the past five (5) years;

(4) Any person who, at any time, has been convicted of a felony for drug possession, distribution or use, unless such felony drug charge was based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for the license; or

(5) Any sheriff, deputy sheriff, police officer, prosecuting officer, and State or local licensing authority or any of its members, inspectors or employees.

(c) Jurisdiction.

(1) In investigating the qualifications described herein, the local licensing authority may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the local licensing authority takes into consideration information concerning the applicant's criminal history record, the local licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.

(2) As used in Subsection (c)(1) of this Section, "criminal justice agency" means any federal, State, or municipal court or any governmental agency or sub-unit of such agency that performs the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice. (Ord. 2013-42 §1; Ord. 2014-10 §1; Ord. 2018-20 §15; Ord. 2019-28 §§ 2, 3)
be operated by the licensee in the City. Each such copy shall show the name and address of the licensee, the type of facility or establishment for which it is issued, and the address of the facility at which it is to be displayed.

(b) Each license issued pursuant to this Article shall be valid for one (1) year from the date of issuance and may be renewed only as provided in this Article. All renewals of a license shall be for no more than one (1) year. An application for the renewal of an existing license shall be made to the local licensing authority at least forty-five (45) days prior to the date of expiration of the license. A licensee may submit to the local licensing authority a late renewal application on the prescribed forms and pay a non-refundable late application fee in an amount of five hundred dollars ($500.00) for a renewal application made less than forty-five (45) days prior to the date of the expiration of the license. All other provisions concerning renewal applications apply to a late renewal application. The timely filing of a completed renewal application or a late renewal application shall extend the current license until a decision is made on the renewal.

(c) Notwithstanding State law to the contrary, a licensee whose license expires and for which a renewal application has not been received by the expiration date shall be deemed to have forfeited its license under this Article. The City shall not accept renewal applications after the expiration date of such license.

(d) A licensee whose license expires shall not distribute or sell retail marijuana or retail marijuana products until all necessary new licenses have been obtained. (Ord. 2013-42 §1; Ord. 2014-10 §1; Ord. 2015-5 §4)

Sec. 6-566. Authority to impose conditions on license.

The local licensing authority shall have the authority to impose such reasonable terms and conditions on a license as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this Article and applicable law. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-567. Annual operations fee; transaction fee.

A licensee shall pay the following fees for the following purposes:

(a) At the time of submittal of an application for a license or any renewal of a license, the licensee shall pay to the City a fee in an amount determined by the City by separate resolution to be sufficient to cover the annual cost of inspections conducted pursuant to Section 6-583 of this Article by the Black Hawk Police Department, and such other departments of the City as may be designated by the local licensing authority, for the purpose of determining compliance with the provisions of this Article and any other applicable State or local laws or regulations; and

(b) The licensee shall pay a transaction fee of two dollars ($2.00) per transaction. Such transaction fee shall be used by the City to offset the impacts caused by the issuance of such a license, including the impacts of increased law enforcement needs, increased emergency services needs, and the impact on Gregory Street and its associated buildings and infrastructure. (Ord. 2013-42 §1; Ord. 2014-10 §1; Ord. 2015-5 §4)

Sec. 6-568. Display of license.

(a) Each license shall be limited to use at the premises specified in the application for such license.

(b) Each license shall be continuously posted in a conspicuous location at the retail marijuana store. (Ord. 2013-42 §1; Ord. 2014-10 §1)
Sec. 6-569. Management of licensed premises.

Licensees who are natural persons shall either manage the licensed premises themselves or employ a separate and distinct manager on the premises and report the name of such manager to the local licensing authority. Licensees that are entities shall employ a manager on the premises and report the name of the manager to the local licensing authority. All managers must be natural persons who are at least twenty-one (21) years of age. No manager shall be a person who has discharged a sentence for a felony conviction within the past five (5) years, or who has been convicted of a felony for drug possession, distribution or use, unless such felony drug charge was based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offence on the date he or she applied for the license. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-570. Change in manager; change in financial interest.

(a) Each licensee shall report any change in managers to the local licensing authority within thirty (30) days after the change. Such report shall include all information required for managers under Section 6-569 of this Article.

(b) Each licensee shall report in writing to the local licensing authority any change in the license holder's Controlling Beneficial Owner(s) within forty-five (45) days of the change. A report shall be required for any transfer of the capital stock of a public corporation totaling more than ten percent (10%) of the stock in any one (1) year, as well as any transfer of a controlling interest in the corporation whenever a sufficient number of shares have been transferred to effectuate the transfer of a controlling interest. No person having or acquiring a financial interest in the retail marijuana store that is the subject of a license shall be a person who has discharged a sentence for a felony conviction within the past five (5) years, or who has been convicted of a felony for drug possession, distribution or use, unless such felony drug charge was based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offence on the date he or she applied for the license. (Ord. 2013-42 §1; Ord. 2014-10 §1; Ord. 2015-5 §5; Ord. 2019-28 §4)

Sec. 6-571. Transfer of ownership; change of location.

(a) Transfer of ownership. For a transfer of ownership, a license holder shall apply to the State and local licensing authority on forms provided by the State licensing authority. In considering whether to permit a transfer of ownership, the local licensing authority shall consider only the requirements of this Article, the Colorado Retail Marijuana Code, and the regulations promulgated in conformance therewith. The local licensing authority may hold a hearing on the application for a transfer of ownership, but such hearing shall not be held until a notice of such hearing has been posted on the licensed retail marijuana store premises for a period of at least ten (10) days prior to
such hearing, and the applicant has been pro-
vided at least ten (10) days prior notice of such
hearing.

(b) Change of location. A licensee from an-
other jurisdiction that has previously obtained
a license from the State and any other local
licensing authority as applicable may move his
or her permanent location to the City of Black
Hawk so long as the applicant and the new
location conform to the requirements of this
Article. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-572. Hours of operation.

(a) A retail marijuana business may open
no earlier than 8:00 a.m. and shall close no later
than midnight the same day. A retail marijuana
business may be open seven (7) days a week.

(b) A retail marijuana business shall be open
for business at least thirty (30) hours per week
and at least forty-nine (49) weeks per year. (Ord.
2013-42 §1; Ord. 2014-10 §1; Ord. 2017-27 §3)

Sec. 6-573. Signage and advertising.

All signage and advertising for a retail mar-
ijuana store shall comply with all applicable
State laws as well as the provisions of this Arti-
cle and other applicable provisions of the Black
Hawk Municipal Code, including Chapter 15
2013-42 §1; Ord. 2014-10 §1)

Sec. 6-574. Security requirements.

(a) Security measures at retail marijuana
stores shall include at a minimum the following:

(1) Security surveillance cameras installed
to monitor all entrances, along with the in-
terior and exterior of the premises, to dis-
courage and facilitate the reporting of crim-
nal acts and nuisance activities occurring at
the premises;

(2) Robbery and burglary alarm systems
which are professionally monitored and
maintained in good working condition;

(3) A locking safe room within the li-
censed premises that is suitable for storage
of all marijuana and cash stored overnight
on the licensed premises;

(4) Exterior lighting that illuminates the
exterior walls of the licensed premises and
complies with applicable provisions of this
Article and other applicable provisions of
the Black Hawk Municipal Code; and

(5) Deadbolt locks on all exterior doors.

(b) All security recordings shall be pre-
served for at least seventy-two (72) hours by the
licensee and be made available to the Black
Hawk Police Department upon request for in-
spection. (Ord. 2013-42 §1; Ord. 2014-10 §1; Ord.
2015-5 §6)

Sec. 6-575. Required notices.

There shall be posted in a conspicuous loca-
tion in each retail marijuana store, a legible sign
containing the following warnings:

(1) That the use of marijuana or mari-
juana products may impair a person’s ability
to drive a motor vehicle or operate machin-
ery, and that it is illegal under State law to
drive a motor vehicle or to operate machin-
ery when under the influence of or impaired
by marijuana;

(2) That loitering in or around a retail
marijuana store is prohibited by law;

(3) That possession and distribution of
marijuana is a violation of federal law; and

(4) That no one under the age of twenty-
one (21) years is permitted on the premises.
(Ord. 2013-42 §1; Ord. 2014-10 §1)
Sec. 6-576. On-site consumption of marijuana.

The use, consumption, ingestion or inhalation of retail marijuana or retail marijuana products on or within the premises of a retail marijuana store is prohibited. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-577. Prohibited acts.

It shall be unlawful for any licensee to:

(1) Employ any person at a retail marijuana store who is not at least twenty-one (21) years of age or who has a criminal history as described in Subsections 6-564(a)(11) and (12);

(2) Purchase or otherwise obtain retail marijuana from any source that is not properly authorized under State and local law to sell or dispense retail marijuana;

(3) Permit the sale or consumption of alcohol beverages on the licensed premises; or

(4) Dispense marijuana to a person that is or appears to be under the influence of alcohol or under the influence of any controlled substance, including marijuana. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-578. Visibility of activities; paraphernalia; control of emissions.

(a) All activities of retail marijuana stores, including, without limitation, processing, displaying, selling and storage, shall be conducted indoors.

(b) Devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming marijuana, including, but not limited to, rolling papers and related tools, water pipes, and vaporizers may lawfully be sold at a retail marijuana store. No retail marijuana or paraphernalia shall be displayed or kept in a retail marijuana store so as to be visible from outside the licensed premises.

(c) Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a retail marijuana store must be provided at all times. In the event that any odors, debris, dust, fluids or other substances exit a retail marijuana store, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, State and local laws and regulations. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-579. Disposal of marijuana byproducts.

The disposal of marijuana, marijuana products, byproducts and paraphernalia shall be done in accordance with plans and procedures approved in advance by the local licensing authority. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-580. Sales and business license required.

At all times that a business is validly operating under this Article XVIII of Chapter 6, the licensee shall also possess a valid business license issued in accordance with the Black Hawk Municipal Code. (Ord. 2013-42 §1; Ord. 2014-10 §1; Ord. 2015-5 §7)

Sec. 6-581. Sales tax.

Each licensee shall collect and remit City sales tax on all retail marijuana, retail marijuana products, paraphernalia and other tangible personal property sold by the licensee, and shall further collect and remit any specific tax
imposed on marijuana on all retail marijuana, retail marijuana products and paraphernalia. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-582. Required books and records.

(a) Every licensee shall maintain an accurate and complete record of all retail marijuana purchased, sold or dispensed by the retail marijuana store in any usable form. Such record shall include the following:

(1) The total quantity of, and amount paid for, the retail marijuana and/or the retail marijuana product(s); and

(2) The date, time and location of each transaction.

(b) All transactions shall be kept in a numerical register in the order in which they occur.

(c) All records required to be kept under this Article must be kept in the English language in a legible manner and must be preserved and made available for inspection for a period of three (3) years after the date of the transaction. Information inspected by the Black Hawk Police Department or other City departments pursuant to this Article shall be used for regulatory and law enforcement purposes only and shall not be a matter of public record. (Ord. 2013-42 §1; Ord. 2014-10 §1; Ord. 2015-5 §8)

Sec. 6-583. Inspection of licensed premises.

During all business hours and other times of apparent activity, all licensed premises shall be subject to inspection by the Black Hawk Police Department and all other City departments designated by the local licensing authority for the purpose of investigating and determining compliance with the provisions of this Article and any other applicable State and local laws or regulations. Said inspection may include, but need not be limited to, the inspection of books, records and inventory. Where any part of the licensed premises consists of a locked area, such area shall be made available for inspection, without delay, upon request. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-584. Nonrenewal, suspension or revocation of license.

(a) The local licensing authority may, after notice and hearing, suspend, revoke or refuse to renew a license for good cause, including suspension or revocation of the licensee's State license. The local licensing authority is authorized to adopt rules and procedures governing the conduct of such hearings.

(b) The local licensing authority may, in its discretion, revoke or elect not to renew any license if it determines that the licensed premises has been inactive, without good cause, for at least one (1) year. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-585. Violations and penalties.

In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this Article, any person, including, but not limited to, any licensee, manager or employee of a retail marijuana store, or any customer of such business, who violates any of the provisions of this Article, shall be subject to the following penalties:

(1) It shall be a misdemeanor offense for any person to violate any provision of this Article. Any person convicted of having violated any provision of this Article shall be punished as set forth in Section 1-73 of the Black Hawk Municipal Code.

(2) The operation of a retail marijuana establishment without a valid license issued pursuant to this Article may be enjoined by the City in an action brought in a court of competent jurisdiction, including the Black Hawk Municipal Court.
(3) The operation of a retail marijuana establishment without a valid license issued pursuant to this Article is also specifically determined to be a public nuisance pursuant to Section 7-2 of the Black Hawk Municipal Code. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-586. No City liability; indemnification.

(a) By accepting a license issued pursuant to this Article, the licensee waives and releases the City, its officers, elected officials, employees, attorneys and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of retail marijuana establishment owners, operators, employees, clients or customers for a violation of State or federal laws, rules or regulations.

(b) By accepting a license issued pursuant to this Article, all licensees, jointly and severally, if more than one (1), agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the retail marijuana establishment that is the subject of the license. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-587. No waiver of governmental immunity.

In adopting this Article, the City Council is relying on and does not waive or intend to waive by any provision of this Article, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as from time to time amended, or any other limitation, right, immunity, or protection otherwise available to the City, its officers or its employees. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-588. Other laws remain applicable.

(a) To the extent the State has adopted or adopts in the future any additional or stricter law or regulation governing the sale or distribution of retail marijuana or retail marijuana products, the additional or stricter regulation shall control the establishment or operation of any retail marijuana establishment in the City. Compliance with any applicable State law or regulation shall be deemed an additional requirement for issuance or denial of any license under this Article, and noncompliance with any applicable State law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

(b) Any licensee may be required to demonstrate, upon demand by the local licensing authority or by law enforcement officers that the source and quantity of any marijuana found upon the licensed premises are in full compliance with any applicable State law or regulation.

(c) If the State prohibits the sale or other distribution of marijuana through retail marijuana stores, any license issued hereunder shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.

(d) The issuance of any license pursuant to this Article shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, distribution or use of marijuana. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-589. Rules and regulations.

The City Manager shall have the authority from time to time to adopt, amend, alter and repeal administrative rules and regulations, and
file the same with the City Clerk, as may be necessary for the proper administration of this Article. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Sec. 6-590. Judicial review.

In accordance with Article 18, § 16 of the Colorado Constitution, decisions by the local licensing authority are subject to judicial review pursuant to C.R.S. § 24-4-106. (Ord. 2013-42 §1; Ord. 2014-10 §1)

Secs. 6-591—6-600. Reserved.

ARTICLE XIX

Marijuana Hospitality Establishments

Sec. 6-601. Findings of fact.

The City Council recognizes that open or public consumption of marijuana is illegal in the state despite legalization of the substance under the Colorado Constitution and state law, and finds there is an unmet need within the City for private, safe and regulated places where adults can legally use and consume marijuana in a social setting. The City Council finds such private social use or consumption of marijuana should be regulated locally, consistent with the state regulatory process set forth in House Bill 19-1230, to minimize the potential adverse impacts on its citizens potentially caused by violations, underage consumption and civil disturbances, as well as to maintain peace and tranquility within the City. (Ord. 2019-19 §1)

Sec. 6-602. Definitions.

The following words, when used in this Article, shall have the meanings respectively ascribed to them:

*Alcohol beverage* means fermented malt beverage or malt, vinous or spirituous liquors; except that alcoholic beverage shall not include confectionery containing alcohol within the limits prescribed by C.R.S. § 25-5-410(1)(i)(II).

*License* means a marijuana hospitality establishment license issued pursuant to this Article.

*Marijuana* has the same meaning as defined in Section 6-555 of this Code.

*Marijuana hospitality establishment* means a facility licensed to permit the consumption, but not the sale, of medical or retail marijuana, medical or retail marijuana concentrate, and medical or retail marijuana-infused products pursuant to this Article.

*Marijuana products* means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients that are intended for use or consumption, such as but not limited to, edible products, ointments and tinctures.

*Open and public or openly and publicly* means a place not protected from unaided observation lawfully made from outside its perimeter not involving physical intrusion and to which the public or a substantial number of the public has access without restriction including, without limitation, highways, transportation facilities, places of amusement, parks, playgrounds, and the common areas of public buildings and facilities that are generally open or accessible to members of the public without restriction.

*Premises* means the distinct and defined private location of a marijuana hospitality establishment, which may include a building, a part of a building, a room, or any other definite contiguous area adequately separated by physical barriers and ventilation to prevent observation of the premises by site, sound or smell from outside of the premises.

*Smoking* means inhaling, exhaling, burning, or carrying any lighted or heated cigar, ciga-
rette, pipe, or any other lighted or heated mar-
ijuana or marijuana concentrate intended for
inhalation.

Vaping means the activation of an electronic
smoking device, or the possession of any acti-
vated electronic smoking device, containing mar-
ijuana or marijuana concentrate.
(Ord. 2019-19 §1)

Sec. 6-603. License required.

Any individual or entity desiring to organize
or operate a marijuana hospitality establish-
ment within the City must obtain a marijuana
hospitality establishment license from the City.
Such license shall be kept current at all times,
and the failure to maintain a current license
shall constitute a violation of this Section.
(Ord. 2019-19 §1)

Sec. 6-604. Requirements of application for
license; payment of application
fee; denial of license.

(a) Applications for a marijuana hospitality
establishment license shall be made to the City
Clerk upon forms provided by the City Clerk
for that purpose. An application fee pursuant to
a separate resolution setting the City of Black
Hawk Fee Schedule shall be submitted at the
time of application.

(b) The application shall include a site plan
defining the proposed licensed premises, showing
where patrons will be permitted to gather,
identifying indoor and outdoor seating or gath-
ering areas, showing parking locations for pa-
trons, and identifying all intended uses of the
establishment premises. The application shall
demonstrate how the premises will be ade-
quately separated by physical barriers and ven-
tilation to prevent observation by site, sound or
smell of the premises from outside of the prem-
ises. The application shall further describe the
methods that will be used to confirm a patron's
age and to restrict all underage access to the
establishment.

(c) The City Council shall grant a mari-
ijuana hospitality establishment license, pro-
vided that the application is fully completed
and is in compliance with this Article and the
ordinances of the City.

(d) A license granted pursuant to this Arti-
cle is valid for a period of one (1) year from
issuance, at which point the license expires un-
less the applicant has filed for and received a
renewal.

(e) A license issued pursuant to this Article
does not eliminate the need for the licensee to
obtain other required permits or licenses re-
lated to the operation of the marijuana hospo-
tality establishment, including, without limita-
tion, a license from the State licensing authority
and any development approvals or building per-
mits required by any other applicable provi-
sions of this Code.

(f) A marijuana hospitality establishment
license issued prior to January 1, 2020 is consid-
ered valid and a licensee may operate without a
state-issued marijuana hospitality establish-
ment license only if the licensee applies for a
state marijuana hospitality establishment li-
cense prior to December 31, 2019. The licensee
may continue to operate without a state license
until the license is approved by the State licens-
ing authority. If the license is denied by the
State licensing authority, the licensee shall im-
mediately cease operations. After January 1,
2020, an applicant for a City marijuana hospi-
tality establishment license must obtain a mar-
ijuana hospitality establishment license from
the State licensing authority before commenc-
ing operations in the City.
(Ord. 2019-19 §1)

Sec. 6-605. Location criteria; limitation on
number of marijuana hospitality
establishments.

Prior to the issuance of a license for a mari-
ijuana hospitality establishment, the local licens-
ing authority shall determine whether the pro-
posed location of the marijuana hospitality establishment complies with the requirements of this Section. Failure to comply with the requirements of this Section shall preclude issuance of a license.

(a) No marijuana hospitality establishment shall be located except within the History Appreciation Recreation Destination (HARD) District.

(b) Each marijuana hospitality establishment shall be operated from a permanent location. No marijuana hospitality establishment shall be permitted to operate from a moveable, mobile or transitory location.

(c) The suitability of a location for a marijuana hospitality establishment shall be determined at the time of the issuance of the first license for such business. The fact that changes in the neighborhood that occur after the issuance of the first license might render the site unsuitable for a marijuana hospitality establishment under this Section shall not be grounds to suspend, revoke or refuse to renew the license for such business so long as the license for the business remains in effect.

(d) In addition to the location limitations set forth herein, no new marijuana hospitality establishment application shall be accepted for filing in the event one (1) marijuana hospitality establishment is already licensed as of the date of the proposed new application.

(Ord. 2019-19 §1)

Sec. 6-606. Renewal.

(a) Each license issued pursuant to this Article shall be valid for one (1) year from the date of issuance and may be renewed only as provided in this Article. All renewals of a license shall be for no more than one (1) year. An application for the renewal of an existing license shall be made to the City Clerk not more than sixty (60) days and not less than thirty (30) days prior to the date of expiration of the license. A licensee may submit to the City Clerk a late renewal application on the prescribed forms and pay a non-refundable late application fee in an amount set forth in the City of Black Hawk Fee Schedule for a renewal application made less than thirty (30) days prior to the date of the expiration of the license. All other provisions concerning renewal applications apply to a late renewal application. The timely filing of a completed renewal application or a late renewal application shall extend the current license until a decision is made on the renewal.

(b) A licensee whose license expires and for which a renewal application has not been received by the expiration date shall be deemed to have forfeited its license under this Article. The City shall not accept renewal applications after the expiration date of such license.

(Ord. 2019-19 §1)

Sec. 6-607. Permitted activities.

Activities on the premises of a marijuana hospitality establishment may include the smoking, vaping, or consumption of marijuana or marijuana products, provided that all other laws, rules and regulations, including without limitation, the requirements of the Colorado Clean Indoor Air Act, C.R.S. § 25-14-201, et seq., and Chapter 7, Article VII, of this Code, applicable to such use and consumption at the particular location are met.

(Ord. 2019-19 §1)

Sec. 6-608. Hours of operation.

Any indoor area of a marijuana hospitality establishment may be open from 7:00 a.m. until 2:00 a.m., and any outdoor consumption area may be open from 7:00 a.m. until midnight. A marijuana hospitality establishment may be open seven (7) days a week.

(Ord. 2019-19 §1)
Sec. 6-609. Restrictions.

A licensee under this Article shall not:

(1) Sell, serve, or permit the sale or service of retail or medical marijuana, marijuana products or alcoholic beverages on the premises;

(2) Permit, allow, or fail to prevent the consumption of alcoholic beverages on the premises;

(3) Operate a license issued pursuant to this Article upon the same licensed premises for which a license or permit issued pursuant to Section 6-58(a) or 6-74 of this Code has been issued;

(4) Permit, allow or fail to prevent open or public consumption of marijuana or marijuana products on the premises or otherwise ensure that the display and consumption of marijuana is not visible from outside the licensed premises, except that consumption of marijuana or marijuana products upon the licensed premises in an outdoor area shall not be deemed to be visible provided adequate screening exists as approved by the City;

(5) Allow on-duty employees of the establishment to consume any marijuana in or on the premises;

(6) Distribute or allow the distribution of free samples of marijuana in the licensed premises of the establishment;

(7) Allow the smoking of tobacco or tobacco products in the licensed premises of the establishment or otherwise permit, allow, or fail to prevent indoor smoking or other activities in violation of the Colorado Clean Indoor Air Act, C.R.S. §25-14-201, et seq., or Chapter 7, Article VII, of this Code, on the premises;

(8) Allow onto the premises any person under twenty-one years of age;

(9) Permit the use or consumption of marijuana by a patron who displays any visible signs of intoxication; or

(10) Knowingly permit any activity or acts of disorderly conduct, or otherwise permit rowdiness, undue noise, or other disturbances or activity offensive to the average citizen or to the residents of the neighborhood in which the licensed premises is located.

(Ord. 2019-19 §1)

Sec. 6-610. Report of disorderly conduct.

Any licensee under this Article shall immediately report to the Police Department any unlawful or disorderly act or conduct committed at or in the marijuana hospitality establishment.

(Ord. 2019-19 §1)

Sec. 6-611. Right of entry.

The Police Department or any authorized agent of the City may conduct routine inspections of the premises to ensure compliance with the requirements of this Article.

(Ord. 2019-19 §1)

Sec. 6-612. Violations.

It is unlawful for any person to organize or operate a marijuana hospitality establishment without first obtaining a license from the City as provided in this Article. Any failure to comply with any conditions stated in a license or any of the requirements of this Article shall be a violation of this Article.

(Ord. 2019-19 §1)

Sec. 6-613. Penalties; revocation of license.

(a) Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty
or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. For each day, or portion thereof, during which any violation continues, a person may be cited for a separate civil infraction.

(b) The City may, after notice and hearing, suspend, revoke or refuse to renew a license for good cause, including suspension or revocation of the licensee's State license or failure to comply with the terms of this Article. The City is authorized to adopt rules and procedures governing the conduct of such hearings.

(Ord. 2019-19 §1)

Secs. 6-614—6-700. Reserved.

ARTICLE XX

Short-Term Rental Properties

Sec. 6-701. Intent and purpose.

(a) It is the intent of the City Council to establish licensing regulations to safeguard the public health, safety and welfare by regulating and controlling the use and occupancy of short-term rental properties in the City.

(b) This Article shall apply to short-term rental properties only as defined herein. This Article shall not apply to motels, hotels, bed and breakfasts, or other establishments providing lodging for the general public.

(c) This Article shall not supersede or affect any private conditions, covenants or restrictions applicable to a parcel of property.

(Ord. 2018-16 §1)

Sec. 6-702. Definitions.

As used in this Article, the following words shall have the meaning ascribed below:

Bed and breakfast shall have the same meaning as in Section 16-24 of the Black Hawk Municipal Code.

Hotel and motel shall have the same meaning as in Section 16-24 of the Black Hawk Municipal Code.

Lease means an agreement or act by which an owner gives to a tenant, for valuable consideration, possession, and use of property or a portion thereof for a definite term, at the end of which term the owner has an absolute right to retake control and use of the property.

Owner means the record owner of a dwelling or dwelling unit who intends to lease or who leases the unit as a short-term rental.

Short-term rental shall have the same meaning as in Section 16-24 of the Black Hawk Municipal Code.

(Ord. 2018-16 §1)

Sec. 6-703. License required.

(a) A valid license is required for each short-term rental in the City. The City Clerk may require a certificate of occupancy in the City Clerk's discretion.

(b) Licenses shall be issued by the City Clerk, provided the requirements of this Article are met.

(Ord. 2018-16 §1)

Sec. 6-704. Application/fee.

(a) Applications shall include the required license fee, and other documents and/or information as required by the City Clerk.

(b) All applicants for a short-term rental license shall complete and file with the application a License-Holder Affidavit of Inspection ensuring compliance with Section 6-706 of this Article.

(c) The annual license fees under this Article shall be set by resolution of the City Council adopting the City of Black Hawk Fee Schedule.
(d) Applications for structures or other temporary dwellings that do not have a certificate of occupancy permitting such a use shall not be processed for a license.
(Ord. 2018-16 §1)

Sec. 6-705. License term.

(a) The license term shall be for a period of one (1) year from the date of issuance of a short-term rental license.

(b) Issuance of a short-term rental license shall not create a continued right to operate a short-term rental property beyond the annual term of the license. All short-term rentals shall be subject to amendments to this Article.

(c) An application for renewal shall be submitted not less than thirty (30) days prior to the date of expiration of the existing license.
(Ord. 2018-16 §1)

Sec. 6-706. Health and safety standards.

Each short-term rental property shall be licensed and in compliance with all applicable standards established under this Article as follows:

(a) Each short-term rental property shall have a posting of the following information in a conspicuous place and manner available to renters:

(1) The short-term rental license number;

(2) The contact information of the property owner or manager;

(3) The contact information for all emergency services;

(4) Fire escape routes (if a multi-story building); and

(b) Method and timing of trash disposal and recycling.

(c) Each short-term rental shall ensure that the address number of the rental property is visible and easy to read from the road to the front of the building.

(d) Each short-term rental shall ensure that all smoke and carbon monoxide detectors are in working order and in compliance with Article IX, Chapter 7 of this Code.

(e) Each short-term rental shall ensure that fire extinguishers are present and maintained as required by the International Fire Code, as adopted in Section 18-2(b)(1).

(f) Each short-term rental shall ensure that the property is serviced by water and sanitation systems that have been approved to meet all state health standards.

(g) Each short-term rental shall ensure that the exterior and interior of the property are in good repair, including, but not limited to, kitchen facilities that are provided which shall be maintained in good repair.

(h) Each short-term rental shall ensure that there are no active hazards present.

(i) Each short-term rental shall ensure that the property is pest and vermin free.

(Ord. 2018-16 §1)
Sec. 6-707. Advertising.

All advertising for a short-term rental property shall include the short-term rental license number. No property may be advertised for lease until a license has been issued.

(Ord. 2018-16 §1)

Sec. 6-708. Suspension.

A license may be suspended:

(1) When any money due to the City has not been paid. This includes failure to pay civil penalties, fines, taxes, or any other money owed to the City.

(2) When any activity conducted by the licensee, his or her agent, or an occupant of a short-term rental violates any federal, state, or local rule, regulation, or law.

(3) Upon failing to comply with the terms and conditions of the license.

(4) Upon any ground of suspension provided by ordinance.

(Ord. 2018-16 §1)

Sec. 6-709. Revocation.

A license may be revoked by the City:

(1) When it appears that the license was obtained by fraud, misrepresentation or false statements within the application;

(2) When it appears that the use of the property as a short-term rental property is a public nuisance as defined by this Code or statute or violates any federal, state, or local rule, regulation, or law.

(3) Upon failing to comply with the terms and conditions of the license.

(4) Upon any ground of revocation provided by this Code.

(Ord. 2018-16 §1)

Sec. 6-710. Renewal.

(a) Upon receipt of a timely renewal application, the City Clerk shall review the application and shall administratively approve renewal of the license, provided that the property has not been in violation of this Article, has not had its short-term rental license suspended, and has not been the subject of a nuisance violation conviction or plea of guilty or no contest. Otherwise, the renewal application shall be reviewed by the City Council at a public hearing upon notice being delivered via first class mail to the owners of the short-term rental property and posting of notice of the hearing at a conspicuous location on the subject property.

(b) In deciding whether to renew the license, the City Council shall consider the severity of the violation, the culpability of licensee, any measures taken to remedy the violation and to ensure it will not reoccur.

(Ord. 2018-16 §1)

Sec. 6-711. Violations and penalty.

(a) It is unlawful for any owner or occupant of a short-term rental property to violate any provision of this Article or any other applicable provisions of this Code.

(b) In addition to the suspension and revocation proceedings pursuant to Sections 6-708 and 6-709, violations of this Article shall be subject to the penalties set forth in Article IV of Chapter 1 of this Code. Each separate act in violation of this Article, and each and every day or portion thereof during which any separate act in violation of this Article is committed, continued, or permitted, shall be deemed a separate offense. Any remedies provided for in this
Article shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.
(Ord. 2018-16 §1)
# CHAPTER 7

**Health, Sanitation and Animals**

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ARTICLE I

General Provisions

Sec. 7-1. Purpose.

It shall be the policy of the City to promote the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of the City and, therefore, the Board of Aldermen declares that every public nuisance shall be unlawful and shall be restrained, prevented, abated and enjoined. (Ord. 92-7 §1)

Sec. 7-2. Definitions.

As used in the provisions of this Article:

Agent means and includes any person acting on behalf of or in place of the owner.

Litter means and includes any and every rubbish, waste material, refuse, garbage, trash, debris, excrement, urine, offal composed of animal matter or vegetable matter or both, or any noxious or offensive matter whatever, dead bird, dead fish, fishing line, bait, chemical, chemical compound, petroleum product or compound, automobile part or accessory, tire, wheel, junk, paper, cardboard, can, lid, bottle, cap, carton, wrapper, box, wooden object, plastic object, clothing, cloth, metal object, rubber object, leather object, hide, feathers, grass clippings, leaves, cut weeds, branches cut from trees or bushes, brick, cinderblock, building material, paint, concrete, sand, gravel, stone, glass, asphalt, ashes, cigarette, cigar, food or food product, solvent, dye, beverage and liquid except water.

Mayor and Chief of Police refer to the elected position of Mayor and the position of Chief of Police for the City.

Occupant means and includes any person who occupies the whole or part of a building, premises or land, whether alone or with others.

Owner means and includes:

a. Any owner or holder of any legal or equitable estate in real property, including a dominant or servient tenement, except a future or reversionary interest and except the interest of a public trustee, lien holder, mortgagee or beneficiary of a deed of trust.

b. The owner of record, as reflected by the records of the office of the County Clerk and Recorder.

Property authorization means and includes the written or verbal authorization of an officer, department or judge of the City or the State authorizing or requiring an act which is done in pursuance of such authorization; and, in the case of any provision defining an offense against private property, the written or verbal authorization or permission of the owner of such property. A public officer or employee acting within the scope of his or her authority or employment shall be deemed to have proper authorization therefor.

Public nuisance includes:

a. The conducting or maintaining of any business, occupation or activity prohibited by statute or by ordinance.

b. The continuous or repeated conducting or maintaining of any business, occupation, operation, activity, building, land or premises in violation of any statute or ordinance.

c. Any building, structure or land open to or used by the general public, the condition of which presents a substantial danger or hazard to public health or safety.
d. Any unlawful pollution or contamination of any surface or subsurface waters in this City, of the air, or of any water, substance or material intended for human consumption.

e. Any activity, operation or condition which, after being ordered abated, corrected or discontinued by a lawful order of a department or officer of the City or the County, continues to be conducted or continues to exist in violation of any statute or ordinance or in violation of any regulation of the City, the County or the State.

f. Any activity, operation, condition, building, structure, place, premises or thing which is injurious to the health or safety of the citizens of the City, or which is indecent or offensive to the senses so as to interfere with the comfortable enjoyment of life or property.

g. Any nuisance defined or declared as such by statute or ordinance.

Public place means and includes:

a. Any street, highway, public right-of-way, sidewalk, driveway, alley, church, school building, school grounds, public building, library, fire station, park, parking lot or vacant land.

b. The entire premises of any shopping center, restaurant, bar, store, service establishment, service station, theater, auditorium or place of amusement, except any portion of the premises reserved for the use of the owner or operator thereof or the employees of such owner or operator, and except any portion of the premises from which the general public is excluded.

c. Any lobby, corridor, elevator, stairway, public room, common room or recreation room in a hotel, motel, office building or apartment building.

Public or private property includes, but is not limited to, the real property, building or structure thereon of any person, state, county, city, public or private corporation, or the United States; the right-of-way of any street, road, railroad or highway; and any body of water, irrigation ditch or watercourse, including frozen areas thereof and the shores and beaches thereof; any park, playground building or recreation area; and any school grounds, school building or property used for school purposes.

Trees and shrubs include all trees, shrubs, bushes and all other woody vegetation. (Ord. 92-7 §1; Ord. 94-1 §1)

Sec. 7-3. Inspection of properties.

(a) Authorized inspector. The Mayor and Chief of Police shall have the power and authority to appoint and authorize any police officer, building inspector, code enforcement officer or other officer of the City to inspect and examine any public or private property in the City for the purpose of ascertaining the nature and existence of any nuisance.

(b) Right of entry generally. Whenever necessary to make an inspection to enforce any of the provisions of this Chapter, or whenever an authorized inspector has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a nuisance hereunder, such inspector may enter
such building or premises at all reasonable times
to inspect the same or to perform any duty
imposed on him or her; provided, however, that
if such building or premises is occupied, such
inspector shall first present proper credentials
and request entry; and if such building or prem-
ises is unoccupied, he or she shall first make a
reasonable effort to locate the owner, occupant
or other person or persons having charge or
control of the building or premises, and upon
locating the owner, occupant or other person or
persons shall present proper credentials and
request entry. If entry is refused, the authorized
inspector shall give the owner or occupant, or if
the owner or occupant cannot be located after a
reasonable effort, he or she shall leave at the
building or premises, a written notice of inten-
tion to inspect not sooner than twenty-four (24)
hours after the time specified in the notice. The
notice given to the owner or occupant or left on
the premises shall state that the property owner
has the right to refuse entry and that in the event
such entry is refused, inspection may be made
only upon issuance of a search warrant by a
Municipal Judge of the City, or by a judge of
any other court having jurisdiction. The require-
ments of this Section shall not apply to public
places, including privately owned vacant land,
as defined in Paragraph 7-2(8) above, which
may be inspected by an authorized inspector at
any time without notice.

(c) Search warrants. After the expiration of
the twenty-four-hour period from the giving or
leaving of such notice, the authorized inspector
may appear before the Municipal Judge of the
City and, upon a showing of probable cause by
written affidavit, shall obtain a search warrant
entitling him or her to enter the building or upon
the premises. Upon presentation of the search
warrant and proper credentials, or possession of
same in the case of an unoccupied building or
premises, the authorized inspector may enter into
the building or upon the premises using such
reasonable force as may be necessary to gain
entry.

(d) Probable cause for issuance of search
warrant. For purposes of this Section, a deter-
mination of probable cause will be based upon
reasonableness, and if a valid public interest and
reasonable suspicion of violation justifies the
intrusion contemplated, then there is probable
cause to issue a search warrant. The person
applying for such warrant shall not be required
to demonstrate specific knowledge of the condi-
tion of the particular structure or premises at
issue in order to obtain a search warrant, but
must show some factual or practical circum-
cstances that would cause an ordinarily prudent
person to act. It is unlawful for any owner or
occupant of the building or premises to deny
entry to any authorized inspector or to resist rea-
soneable force used by an authorized inspector,
acting pursuant to this Section.

(e) Right of entry; emergencies. Whenever
an emergency situation exists in relation to the
enforcement of any of the provisions of this
Chapter, an authorized inspector, upon a presen-
tation of proper credentials or identification in
the case of an occupied building or premises, or
possession of the credentials in the case of an
unoccupied building or premises, may enter into
any building or upon any premises within the
jurisdiction of the City.

(1) In the emergency situation, such per-
son or his or her authorized representative
may use such reasonable force as may be
necessary to gain entry into the building or
upon the premises.

(2) For purposes of this Subsection, an
emergency situation includes any situation
where there is imminent danger of loss of, or
injury or damage to, life, limb or property. It
is unlawful for any owner or occupant of the
building or premises to deny entry to any
authorized inspector or to resist reasonable
force used by the authorized official acting
pursuant to this Section. (Ord. 92-7 §1; Ord.
94-1 §1)
Sec. 7-4. Abatement of nuisances – administrative.

(a) Purpose. This Section provides an alternative method for abating a public nuisance to a Municipal Court action. An administrative abatement pursuant to this Section is not a prerequisite for a Municipal Court action, nor shall it preclude the issuance of a summons and complaint prior to, concurrently with or subsequent to an administrative abatement action.

(b) Notice of abatement. The authorized inspector as provided by Subsection 7-3(a) above, upon the discovery of any nuisance on private property in the City, shall notify the owner or occupant of the property to remove and abate from the property the thing or things therein described as a nuisance within the time specified in the notice. However, no notice to abate shall be required for nuisances found on public property.

(1) The time for abatement of a nuisance posing an imminent danger of damage or injury to or loss of life, limb, property or health shall not exceed one (1) day.

(2) As to other nuisances, the reasonable time for abatement shall not exceed seven (7) days unless it appears from the facts and circumstances that compliance could not reasonably be made within seven (7) days or that a good faith attempt at compliance is being made.

(3) If the owner or occupant shall fail to comply with the requirements for a period longer than that named in the notice, then the authorized inspector shall proceed to have the nuisance described in the notice removed or abated from the property described in the notice without delay; and the authorized inspector shall have the authority to call for any necessary assistance. In no event shall the notice described by this Section be required prior to issuance of a summons and complaint.

(c) Service of notice. The written notice to abate shall be served by:

(1) Personally delivering a copy of the notice to the owner of the property described in the notice if the owner also resides at the property;

(2) Personally delivering a copy of the notice to the nonowner occupant or resident of the property described in the notice and mailing a copy of the notice by certified mail, return receipt requested, to the last known address of the owner as reflected in the county assessor records; or

(3) Mailing a copy of the notice by certified mail, return receipt requested, to the last known address of the owner of the property described in the notice as reflected in the county assessor records if the property is unoccupied and by posting a copy of the notice in a conspicuous place at the unoccupied premises. Service of the notice shall be deemed complete upon the date of personal delivery or three (3) business days after the date of mailing as required herein.

(d) Costs of abatement. If the City abates the nuisance, it shall be entitled to recover its abatement costs, plus fifteen percent (15%) of the abatement cost for inspection, and any other additional administrative costs. If the cost of abatement is not paid, a lien may be placed upon any property on which the abatement was performed and shall have priority over all other liens, except general taxes and prior special assessments. The lien may be collected by any legal means, including certification to the County Treasurer for collection in the same manner as taxes.

(e) Contents of notice. The notice to abate issued pursuant to the provisions of this Section to the owner or occupant of property upon which a nuisance was discovered shall contain the following:
(1) The address and other description of the property upon which the nuisance was discovered;

(2) The name and address of the owner of the property upon which the nuisance was discovered as reflected in the county assessor records;

(3) The name and address of the occupant of the property upon which the nuisance was discovered, if known, and if different from the owner;

(4) A description of the thing or things or condition deemed to be a nuisance;

(5) The time in which the thing or things or condition are to be removed or abated from the property;

(6) A statement advising the owner or occupant that he or she may protest the determination of the authorized inspector with respect to any matters stated in the notice, by filing a written protest pursuant to Section 7-5 below with the Municipal Court within the time allowed for the removal or abatement of the nuisance described;

(7) A statement that, if the owner or occupant fails to comply with directions contained in the written notice or file a written protest thereto in the time allowed, the City will enter the property, abate the nuisance described therein and assess the costs thereof to the owner of the property;

(8) A statement that, if the City abates the nuisance, it shall be entitled to recover its abatement costs, plus fifteen percent (15%) of the abatement cost for inspection, and any other additional administrative costs; and

(9) A statement that, if the cost of abatement is not paid, a lien may be placed upon any property on which the abatement was performed.

(f) Abatement action. When a public nuisance has not been voluntarily abated within the time specified in the notice to abate, the City may proceed to abate the nuisance from the property and collect the costs specified in Subsection (d) above. (Ord. 2011-16 §1)

Sec. 7-5. Protest of notice of abatement.

The owner or occupant of any property subject to a notice of abatement, within the period of time set forth in the notice, may protest any matter stated in the notice by filing a written protest with the City Clerk. The City Clerk shall forward the protest to the City Manager. The City Manager shall forthwith schedule a hearing on the protest. During the pendency of the protest, the order to abate shall be stayed. (Ord. 2011-16 §1)

Sec. 7-6. Municipal Court action.

At any time, the City may bring an action in the Municipal Court to have the nuisance declared as such by the Court and for an order enjoining the public nuisance or authorizing its restraint, removal, termination or abatement by the owner, agent or occupant, by the person who caused the nuisance, by the person who allowed the nuisance to be caused or to continue or by the City. (Ord. 2011-16 §1)

Sec. 7-7. Penalty.

(a) It shall be a civil infraction for any person to:

(1) Create, operate, maintain or conduct any nuisance as defined in this Article.

(2) Interfere with or prevent, or attempt to interfere with or prevent, the abatement of any nuisance pursuant to the provisions of this Article.

(3) Fail to abate a nuisance or violate this Article as specified in this Section.
(b) Any person who is found guilty of, or pleads nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. For each day, or portion thereof, during which any violation continues, a person may be cited for a separate civil infraction. The penalties specified in this Section shall be cumulative and nothing shall be construed as either prohibiting or limiting the City from pursuing such other remedies or penalties, in an action at law or equity. (Ord. 2011-16 §1)

Secs. 7-8—7-20. Reserved.

ARTICLE II

Nuisances

Sec. 7-21. Offensive trade or business.

Whenever the pursuit of any trade, business or manufacture or maintenance of any substance or condition of things results in a condition detrimental to the health, safety or general welfare of the inhabitants of the City, such pursuit shall be deemed a nuisance, and shall be abated. By way of illustration, but not limitation, the pursuit of the following trades or businesses within the City shall constitute unlawful nuisances.

(1) Junkyards and dumping grounds. All places used or maintained, or permitted to be used or maintained, as junkyards or dumping grounds, or for the wrecking or disassembling of automobiles, trucks, tractors or machinery of any kind, or for the storing or leaving of worn out, wrecked or abandoned automobiles, machinery of any kind, or for any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, when such places are kept in such manner as to interfere with the comfortable enjoyment of life or property by others. Nothing in this Section shall be deemed or construed to prevent the City from acquiring, operating and maintaining a facility for the storage of motor vehicles, machinery or equipment.

(2) Slaughterhouses and rendering plants. All places used or maintained or permitted to be used or maintained for slaughtering animals, for bone crushing, bone boiling, bone rendering, bone burning, fat boiling, fat rendering, fat drying, gut cleaning or the making of glue, or the manufacture of fertilizing materials of any kind or description from any dead animal or part thereof, or any boiling of offal, swill, fat or grease of any description when such places are operated in an unclean or offensive manner, or when such places are operated so as to interfere with the comfortable enjoyment of life or property by others.

(3) Construction sites. All places at which construction or excavation operations occur and from which trucks or other vehicles emerge from the site and carry onto or deposit in any street or other public place any mud, dirt, sticky substance or other litter which causes a hazard to automobile traffic or which otherwise causes a detriment to the health, safety or welfare of the inhabitants of the City.

(4) Storage operations. All places at which the owner or occupant keeps, stores or permits to be kept or stored any building materials, construction materials, paper, trash, waste material or litter upon any property in such a manner to cause a fire hazard or other detriment to the health, safety or general welfare of the inhabitants of the City, or in such a manner that the stored materials may be blown or deposited upon any other public or private property. (Ord. 92-7 §1)
Sec. 7-22. Littering public or private property.

(a) It shall be unlawful and deemed a nuisance for any person to deposit, throw or place any litter upon any street, alley, sidewalk, or public property or place in the City except in public receptacles or authorized private receptacles.

(b) It shall be unlawful and deemed a nuisance for any person, while an operator or passenger in any vehicle, to deposit, throw or place any litter in or upon any street, alley, sidewalk or public property or place in the City except in public receptacles and authorized private receptacles.

(c) It shall be unlawful and deemed a nuisance to operate any truck, trailer or vehicle in such a manner that the load or any portion of the content of such vehicle is blown or deposited in or upon any street, alley, sidewalk or public property or place in the City.

(d) It shall be unlawful and deemed a nuisance for any person to deposit, throw or place any papers, newspapers, handbills, letters, samples or political literature in or upon any public street, alley, sidewalk or public property or place in the City.

(e) It shall be unlawful and deemed a nuisance for any person, except an authorized public employee or officer, or a person who has previously obtained a permit:

(1) To post, place, glue, staple, nail, affix or attach any handbill, poster, placard, announcement or other painted or printed material upon or to any street, alley, sidewalk, lawful sign, telephone pole, power pole or any public or private dwelling, store or other building or fence within the City without the permission of the owner or occupant of such property; or

(2) To post, place, glue, affix or attach any handbill, poster, placard, announcement or other painted or printed material in or upon any passenger automobile within the City without permission of the owner of such automobile.

(f) It shall be unlawful and deemed a nuisance for any person to deposit, throw or place any litter on any public or private property or in any water in the City unless:

(1) Such property is in an area designated by law, ordinance or regulation for the disposal of such material and such person is authorized by the proper public authority to so use such property;

(2) The litter is placed in a receptacle or container installed on such property for such purpose; or

(3) Such person is the owner or occupant in lawful possession of such property, or has first obtained written consent of the owner or tenant in lawful possession, or unless the act is done under the personal direction of said owner or occupant and does not create a public nuisance as that term is defined in Paragraph 7-2(7). (Ord. 92-7 §1)

Sec. 7-23. Unclean stable or stall; manure fertilizer offensive in odor; building offensive in odor or to sight.

(a) Any animal or fowl enclosure in which any animal or fowl shall be kept, or in any other place within the City in which manure or liquid discharges of such animals or fowls shall accumulate, and which is maintained in an unsanitary condition, allowing an offensive odor to escape therefrom, or providing an insect or rodent attractant, shall be deemed a nuisance.
(b) Manure or any other organic material used on premises within the City for fertilizing purposes shall not be allowed to become offensive in odor or to sight, an attraction to insects or rodents, or otherwise create an unsanitary condition.

(c) Whenever manure or any other organic material shall accumulate and affect the health of the public, it may be forbidden and designated a nuisance under the provisions of this Article.

(d) It shall be unlawful and constitute a nuisance for any person in the City to allow any building or premises or appurtenance thereof, to become offensive in odor or to sight, or to create an unsanitary or hazardous health condition. (Ord. 92-7 §1)

Sec. 7-24. Blowing dust.

(a) It shall be unlawful and deemed a nuisance for a person to maintain any lot or lots or vacant land within the City so as to allow the blowing of dust, soil or sand from such property to the detriment of the health, safety and general welfare of the inhabitants of the City or to cause damage to the real or personal property of any person or of the City.

(b) It shall be unlawful and deemed a nuisance for the owner or occupant of any lot, lots or vacant land within the City to maintain lots or vacant land in such a manner that permits dust or blowing soil or blowing sand to be deposited on other property, or to be deposited upon or within any public street, public highway or public way. (Ord. 92-7 §1)

Sec. 7-25. Offensive locations.

(a) Stagnant ponds. Any cellar, vault, drain, sewer, pond of water or other place in the City that shall be noxious or offensive to others, or injurious to public health, through an accumulation or deposit of noxious, offensive or foul water, or mosquitoes, shall be unlawful and deemed a nuisance.

(b) Open wells, cisterns or excavations. It is hereby declared that excavations exceeding five (5) feet in depth, cisterns and wells or an excavation used for storage of water within the City are public nuisances unless the same are adequately covered with a locked lid or other covering weighing at least sixty (60) pounds, or are securely fenced with a solid fence to a height of at least five (5) feet; and it shall be unlawful for any person to permit such nuisance to remain on premises owned or occupied by him or her.

(c) Stale matter. It shall be unlawful and deemed a nuisance to keep, collect, use or cause to be kept, collected or used in the City, or permit to be kept or used, any stale, putrid or stinking fat or grease or other matter.

(d) Sewer inlet. It shall be unlawful and deemed a nuisance to deposit in or throw into, or permit to be deposited in or thrown into, any sewer, sewer inlet or privy vault that shall have a sewer connection, any article whatsoever that might cause such sewer, sewer inlet or privy vault to overflow, back up or otherwise become noxious or offensive to others, or to become injurious to public health, safety or general welfare of the residents of the City. (Ord. 92-7 §1)

Sec. 7-26. Offensive discharges.

(a) Noxious liquids. It shall be unlawful and deemed a nuisance to discharge out of or from, or permit to flow from any house or place in the City, any foul or noxious liquid or substance of any kind whatsoever, into or upon any adjacent ground or lot, or into any street, alley or public place in the City.

(b) Liquid fuel products. The Board of Aldermen hereby finds and declares that the leakage of twenty-five (25) gallons or more of liquid fuel products into the environment of the City from any tank, line or delivery vehicle, constitutes a danger to the health, safety and welfare of the general public and the citizens of the City and is therefore a public nuisance.
(1) To aid in preventing the leakage of liquid fuel products, the owner, station manager or leaseholder, as operator of each underground liquid fuel installation located in the City, shall cause to be posted in a conspicuous place at said installation a true copy of the Colorado Oil Inspection Regulations concerning Instruction Requirements for Leak Detection.

(2) Such owner, station manager or leaseholder, as operator, shall also maintain and reconcile accurate daily inventory records on all underground liquid fuel tanks for indication of possible leakage from tanks or piping.

(c) Leaking receptacles, offensive channels. Any unclean, leaking, foul, unsafe or dangerous, defective or filthy drain, ditch, trail or gutter, or any leaking or broken slop, garbage or manure box or receptacle of like character, whenever or wherever found in the City, shall be deemed a nuisance.

(d) Harmful chemicals. It shall be unlawful and deemed a nuisance for any property owner to apply or use any herbicide, pesticide, insecticide, rodenticide, disinfectant, fumigant or other harmful chemical, gas or vapor upon his or her property in such a manner that the harmful chemical, gas or vapor leaches, escapes, migrates or flows from his or her property and deposits in or on any other public or private property. (Ord. 92-7 §1)

Sec. 7-27. Weed control.

(a) All owners, agents and occupants of land in the City shall prevent property owned or occupied by them from becoming overgrown in weeds. Weeds shall include brush, natural or cultivated plants or grasses in excess of twelve (12) inches in height and other vegetation grown in a rank or unsightly fashion, and shall also include without limitation bindweed, Canada thistle, common ragweed, dandelion, fireweed, milkweed, mustard, perennial sowthistle, Russian knapweed, Russian thistle, sandburs and any other similar plants and vegetation. The foregoing enumeration is not intended to be all inclusive, but rather is intended to be indicative of those types of plants which are considered a nuisance. As used in this Article, the term weed does not include flower or vegetable gardens, cultivated or tended shrubbery or agricultural crops, including but not limited to hay or grass grown for feed, fodder or forage.

(b) It shall be unlawful and shall be deemed a nuisance for the owner, agent or occupant of any property to permit weeds to grow on such property to a height of more than twelve (12) inches.

(c) Weeds shall be controlled by cutting, spraying or other lawful and suitable method of weed control.

(d) The Board of Aldermen may, by resolution, exempt certain areas in the City, whether publicly or privately owned, from the prohibitions contained in this Section, if the Board of Aldermen determines that such areas are: natural open space, natural park, conservation areas, erosion control areas, agricultural zoned property or irrigation or drainage ditch rights-of-way. (Ord. 92-7 §1)

Sec. 7-28. Trees and shrubs.

(a) Trees, shrubs and other vegetation which are dead, broken, diseased or infested by insects so as to endanger the well-being of other trees, shrubs or vegetation or constitute a potential threat or hazard to people or property within the City are hereby declared a nuisance.

(b) The City Arborist as designated by the Mayor shall give written notice to the owner or occupant of any property abutting City rights-of-way or other public property of any condition deemed unsafe caused by trees and other vegetation overhanging or projecting from such abutting property and onto or over such right-of-way or other public property with such un-
safe condition. It shall be the duty of the City Arborist to correct any such unsafe condition immediately upon the expiration of the notice periods specified in the notice of abatement.

(c) It shall be unlawful and deemed a nuisance for any person to cut, trim, spray, remove, treat or plant any tree, vine, shrub, hedge or other woody plants upon access controlled arterials or other public parks and greenbelts within the City, unless authorized or directed by the City Arborist.

(d) It shall be unlawful and deemed a nuisance for any person to injure, damage or destroy any tree, shrub, vine, hedge or other vegetation in or upon public rights-of-way or other public property within the City, except any person who notifies the City Arborist of such injury, damage or destruction and makes arrangements to repair or replace such vegetation or pay for the cost of such repair or replacement.

(e) It shall be unlawful and deemed a nuisance to sell or import into the City or plant or cause to be planted any female cottonwood trees (*Populus* species), boxelder (*Acer negundo*) or Siberian elm (*Ulmus pumila*) or other undesirable plants as designated by ordinance upon any property within the City, and the planting or setting out of these certain plants is declared to be a menace to public health, safety and welfare and a public nuisance. (Ord. 92-7 §1)

Sec. 7-29. Illuminated buildings or premises.

It shall be unlawful and deemed a nuisance for any person in the City to allow any building or premises or appurtenance thereof, to be illuminated in such a manner that is offensive, interferes with the comfortable enjoyment of life or property of others, or which is otherwise a detriment to the health, safety or welfare of the inhabitants of the City. (Ord. 92-7 §1)

Sec. 7-30. Offensive or unhealthy uses.

(a) No building, vehicle, structure, receptacle or other thing used, or to be used, for any purpose whatever, shall be used, made, kept, maintained or operated in or retained within the City, if the use, keeping, maintaining or operation of the same shall be the occasion of any nuisance or danger or detriment to the public health.

(b) Every other act or thing done or made, committed or allowed, or continued on any public or private property or place by any person, which is detrimental to health, offensive to sight, smell or hearing, or causes damage or injury to any of the inhabitants of the City and not otherwise specified in this Article, shall be deemed a nuisance. (Ord. 92-7 §1)

Sects. 7-31—7-50. Reserved.

ARTICLE III

Dogs

Sec. 7-51. Definitions.

For purposes of this Article, the following words shall have the meanings ascribed hereafter:

The words *City pound*, *dog pound* and *pound* shall refer to any facilities used for the boarding and disposition of any animal impounded under the provisions of this Article.

*Dog* as used in this Article shall be construed to mean any dog, bitch or whelp over three (3) months of age. (Ord. 69-4 §1; Ord. 83-3 §1; Ord. 94-1 §1)
Sec. 7-52. License required.

The owner, possessor or keeper of any dog within the City shall secure a license for such dog from the City Clerk on or before the first day of March of each year or within thirty (30) days after the dog reaches the age of three (3) months. New residents of the City shall have thirty (30) days after becoming such residents to secure a license hereunder. (Ord. 69-4 §2)

Sec. 7-53. Fees.

The annual license fee for dogs within the City shall be three dollars ($3.00) for males and spayed females, and five dollars ($5.00) for unspayed females. (Ord. 69-4 §3)

Sec. 7-54. Rabies inoculation required.

The owner, possessor or keeper of every dog within the City shall have such dog inoculated against rabies as frequently as recommended by the "Compendium of Animal Rabies Control" as promulgated by the National Association of State Public Health Veterinarians. Dogs purchased, obtained or otherwise acquired or brought into the City shall comply with this Section within thirty (30) days after such acquisition or being brought into the City. (Ord. 69-4 §4; Ord. 99-20 §1)

Sec. 7-55. Vaccination by licensed veterinarian.

The inoculation required by the preceding Section shall be made by any licensed veterinarian. (Ord. 69-4 §5)

Sec. 7-56. Prerequisite to issuance of license.

Form of application for license. Upon application for a dog license, the applicant shall exhibit to the City Clerk a certificate from a licensed veterinarian that the dog has been inoculated against rabies as required by this Section. All applications for licenses shall be made on forms provided by the City Clerk. (Ord. 69-4 §6)

Sec. 7-57. Tag issuance.

It shall be the duty of the City Clerk to deliver or cause to be delivered to each person making application for a license, paying the license fee provided for in this Article and presenting the certificate of inoculation, a dog tag for each dog licensed and inoculated. (Ord. 69-4 §7)

Sec. 7-58. Possession.

Only those persons who own, possess or keep a dog duly licensed and inoculated in accordance with the provisions of this Article shall be permitted to possess a dog tag as herein provided for. (Ord. 69-4 §8)

Sec. 7-59. Description.

The dog tag provided for shall be of such size, shape, color and material as may be deemed expedient and suitable by the City Clerk; provided, however, that the color thereof shall be changed each year. Such tag shall contain a stamped number thereon in numerical order beginning with Number One and shall also indicate the year for which the same is issued and the words City of Black Hawk. (Ord. 69-4 §9)

Sec. 7-60. Attachment to dog collar or harness.

Every owner, possessor or keeper of a dog within the City shall place upon such dog a collar or harness made of durable material to which the dog tag herein provided for shall be attached. (Ord. 69-4 §10)
Sec. 7-61. Dog tags to be worn only by licensed dogs.

No person shall affix to the collar or harness of any dog or permit to remain so affixed a tag evidencing licensing and rabies inoculation except the dog tag issued to that dog at the time of issuance of its license. (Ord. 69-4 §11)

Sec. 7-62. Records to be kept of issuance; duplicates; transfers.

The City Clerk shall keep a record of the date of issue of each dog tag provided for in this Article and the person to whom such tag is issued and the number thereof. If the dog tag herein provided for is lost or destroyed, a duplicate tag may be obtained from the City Clerk upon payment of a fee of fifty cents ($0.50). In the event that the ownership or possession of a dog is changed, a new dog tag shall be issued by the City Clerk. (Ord. 69-4 §12)

Sec. 7-63. Impoundment generally.

(a) Any animal in violation of this Article or any other ordinance or law of the State may be taken into custody by the dog catcher or police officers, or by other officers, employees or agents of the City and impounded in a humane manner. It shall be lawful for the dog catcher or police officer to enter upon private property for the purpose of catching any animal to be impounded.

(b) No animal shall be destroyed before the lapse of five (5) days during which the shelter is open to the public, except as provided in Section 7-70 of this Article, or unless it is determined that the animal is critically ill or injured, and suffering, or the prognosis for recovery is poor. The animal shelter may consult with a veterinarian as to the disposition of injured animals when the prognosis cannot be ascertained with reasonable certainty.

(c) If a dog is impounded upon a charge of a violation of Section 7-70, Vicious dog, or Section 7-71, Confinement of biting dogs, the owner shall be entitled to a hearing in the Municipal Court. Such hearing shall be scheduled not less than seventy-two (72) hours after the dog owner is provided written notice of such hearing. At that hearing, the Municipal Court shall determine the appropriate disposition for the impounded dog. The Court may order the dog released to the owner with conditions, may order the dog to be put up for adoption or, if the Court finds the dog to be vicious, may order that the dog be humanely euthanized. (Ord. 69-4 §13; Ord. 83-3 §2; Ord. 99-35 §1)

Sec. 7-64. Filing of complaint in Municipal Court against owner or keeper of impounded dog.

If a dog is impounded, it shall be the duty of the dog catcher or any police officer to immediately institute proceedings in the Municipal Court on behalf of the City against the owner, possessor or keeper of such dog if known, charging the owner, possessor or keeper with a violation of the appropriate Section of this Article. Nothing herein contained shall be construed as preventing the dog catcher, any police officer or any citizen from instituting a proceeding in Municipal Court in the City for violation of this Section where there is no impoundment. (Ord. 69-4 §15)

Sec. 7-65. Procedure for release of impounded dog.

Any animal impounded under the provisions of this Article shall not be released by the animal shelter until the owner shall have paid all fees and charges due, including impoundment and boarding fees as established from time to time by the animal shelter together with any veterinary fees incurred. (Ord. 69-4 §17; Ord. 83-3 §4)
Sec. 7-66. Disposal of dog whose owner or keeper cannot be located.

(a) Impounded animals remaining unclaimed after five (5) days, not counting the first day of impoundment, may be disposed of at the sole discretion of the animal shelter.

(b) Failure of the owner of any impounded animal to claim such animal from the animal shelter within five (5) days does not relieve such owner of liability for payment of impoundment, board, veterinary, euthanasia and/or disposal fees as established by the animal shelter. (Ord. 69-4 §18; Ord. 83-3 §5)

Sec. 7-67. Interference with dog catcher or police officer performing duties.

It shall be unlawful for any person to interfere with, molest, hinder or obstruct the dog catcher or any police officer in the discharge of their official duties under this Article. (Ord. 69-4 §20)

Sec. 7-68. Instigation or encouraging dog fights prohibited.

No person shall cause, instigate or encourage any dog fight within the City. (Ord. 69-4 §21)

Sec. 7-69. Running at large prohibited.

It shall be unlawful for any owner, possessor or keeper of any dog in the City to permit the same to run at large within the City. A dog shall be deemed to be running at large when off or away from the premises of the owner, possessor or keeper thereof and not under the control of such owner, possessor or keeper, his or her agent or servant or a member of his or her immediate family, either by leash, cord or chain, not more than ten (10) feet in length that is being held and controlled by such person. (Ord. 69-4 §22, Ord. 2007-13 §1)

Sec. 7-70. Vicious dogs.

Vicious dogs shall not be kept, possessed or harbored within the City. For the purpose of this Section, a vicious dog is hereby defined and declared as a dog that unprovokedly bites or attacks human beings or other animals either on public or private property or, in a vicious or terrorizing manner, approaches any person in any public ground or place. It shall be the duty of the dog catcher and all police officers to take up and impound any dog which is a vicious dog. In the event a vicious dog cannot be taken up and caught by the dog catcher or police officer without such dog catcher or police officer exposing himself or herself to danger or personal injury from such dog, it shall be lawful for the dog catcher or any police officer to forthwith destroy such dog without notice to the owner, keeper or possessor thereof. (Ord. 69-4 §23)

Sec. 7-71. Confinement of biting dogs.

(a) The owner, possessor or keeper of any dog which has bitten or which is suspected to have bitten any person or which is suspected of having rabies shall immediately notify the dog catcher or a police officer of such fact. Any dog which has bitten or which is suspected to have bitten any person, or which is believed to have rabies or to have been exposed to rabies, shall be confined, upon order of the dog catcher or any police officer, for a period of ten (10) days for observation. Such dog shall either be confined at the residence of the owner, possessor or keeper thereof, if such confinement can be accomplished without exposing such a dog to the public, or at the option of the dog catcher or police officer, such dog shall be confined at the City pound or at a veterinary hospital at the expense of the owner, possessor or keeper of the dog.

(b) To protect the public and the dog from the potential risk of rabies and other infectious diseases, the following rules shall apply during the ten-day confinement:
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(1) The owner, possessor or keeper of the dog shall not permit the dog to come into contact with the public or any other animal.

(2) The dog shall not be removed from the place of confinement without prior consent of the dog catcher or a police officer.

(3) The dog shall not be inoculated against rabies.

(4) The dog shall not be disposed of or destroyed. (Ord. 69-4 §24; Ord. 99-35 §2; Ord. 99-35 §2)

Sec. 7-72. Notice or knowledge of violation of Section not necessary for prosecution of owner or keeper.

For the purpose of prosecution for violation of this Article, it shall not be necessary in order to obtain a conviction to prove notice or knowledge on the part of the owner, possessor or keeper of the dog in question that such dog was violating any of the provisions of this Section at the time and place charged, it being the purpose and intent of this Article to impose strict liability upon the owner, possessor or keeper of any dog for the actions, conduct and condition of such dog. (Ord. 69-4 §25)

Sec. 7-73. Penalties.

Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. For each day, or portion thereof, during which any violation continues, a person may be cited for a separate civil infraction. (Ord. 94-1 §1)

Sec. 7-74. Noisy dogs prohibited.

(a) It is unlawful for any owner, possessor or keeper of any dog to permit such dog by loud and persistent habitual barking, howling or yelping to disturb any person or neighborhood, and the same is declared to be a public nuisance. It shall not be necessary for the purposes of this Section to identify and describe the particular dog which is barking, howling or yelping, provided only that it shall be shown who has possession, care, custody or control of the dog.

(b) Any person who violates this Section is subject to the penalties as set forth in Section 7-73 above. (Ord. 2002-07 §1)

Secs. 7-75—7-90. Reserved.

ARTICLE IV

Restaurant Grills and Air Quality

Sec. 7-91. Definitions.

Charbroiler means a cooking device in a commercial food service establishment, either gas-fired or using charcoal or other fuel, upon which grease drips down upon an open flame, charcoal or embers.

Food service establishment means any place where food is prepared and intended for individual portion service, including any site where individual portions are provided regardless of whether the food provided is consumed on or off the premises or whether there is a charge for the food served.

High-fat content meat means any meat and/or the meat portion of any meat product having a precooked fat percentage equal to or greater than fifteen percent (15%) by weight according to established laboratory testing procedures as determined by the Colorado Department of Health, such meat and/or meat products including, without limitation, hamburger, chopped beef, ground beef, beef sausage, beef ribs, pork, pork sausage, pork ribs and sausage made for any form of meat or combination of meats.
Other cooking device, as used under this Article, means any device or system, the purpose of which is to cook food products by such methods, including but without limitation, frying, grilling and wok. (Ord. 94-5 §1)

Sec. 7-92. Compliance required.

It shall be unlawful for any person to construct, maintain or operate a restaurant grill, fryer, cooker, wok, charbroiler or other cooking device in a commercial food service operation within the City in a manner not in compliance with this Article. Owners and operators of food service establishments which use charbroilers, grills and other cooking devices installed on or after March 1, 1994, shall install, operate and maintain a control device that reduces uncontrolled particulate emissions by at least ninety percent (90%), according to manufacturer specified removal efficiencies. This Section shall not apply to the replacement of an existing charbroiler, grill and other cooking device. Control devices required by this Section shall be maintained according to manufacturer's recommended guidelines. All owners and operators of food service establishments subject to the provisions of this Section shall maintain records containing the control device's installation date, manufacturer's recommended maintenance guidelines and the actual maintenance performed on the control device. (Ord. 94-5 §1)

Sec. 7-93. Inspection and certification.

Owners and operators of food service establishments subject to this Article shall be responsible for having their particulate removal system inspected by the manufacturer's representative annually to ensure the system continues to meet the particulate reduction requirements stated in Section 7-92 above. Owners and operators of food service establishments subject to this Article shall have until March 1st of each year to file with the Planning Department a copy of the manufacturer's certificate of compliance. The form of the certificate of compliance can be obtained from the Planning Department. It shall be unlawful for any owner or operator of a food service establishment subject to this Article to not comply with this Section. (Ord. 94-5 §1)

Sec. 7-94. Compliance orders.

(a) When the Planning Department has reasonable evidence that a person is in violation of these regulations, the Director of the Planning Department or the Chief of Police shall issue an order to show cause why such violation should not be prosecuted hereunder. Such notice shall be served upon such person by first class mail to his or her local business address or his or her last known address, and the notice shall provide for a date of a show cause hearing not later than ten (10) days after receipt of said notice.

(b) At said show cause hearing held before the Board of Aldermen, if the person fails to show cause why the violation should not be prosecuted or fails to appear at the hearing, the Mayor shall issue an order specifying a date for final compliance with these regulations, which date shall be not less than ten (10) and not more than thirty (30) days from the show cause hearing date. (Ord. 94-5 §1)

Sec. 7-95. Hearing.

(a) All hearings under this Article shall be before the Board of Aldermen.

(b) At any time prior to the final compliance date specified in the final compliance order, the person may request a public hearing in writing to the Director of the Planning Department for the purpose of review of the compliance order, or to request a modified order or a delay in compliance. Within twenty (20) days after receipt of such request, the Board of Aldermen shall calendar the public hearing within sixty (60) days from the receipt of the request. Following the hearing, the Board of Aldermen shall issue its decision and order within thirty (30) days of such hearing.
(c) Grounds for granting a modified or delayed compliance order may include, without limitation:

(1) Planned termination of operations of the polluting facility;

(2) Planned replacement of the polluting facility;

(3) A change in the operations of the polluting facility; or

(4) Practical economic hardships.

(d) Notice of a hearing before the Board of Aldermen shall be published in a newspaper of general circulation in the area at least thirty (30) days prior to the hearing date.

(e) Any information relating to secret processes or methods of manufacture or production shall be heard in executive session if so requested by the party upon a showing of good cause. (Ord. 94-5 §1)

Sec. 7-96. Penalty.

Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. For each day, or portion thereof, during which any violation continues, a person may be cited for a separate civil infraction. The penalties specified in this Section shall be cumulative and nothing shall be construed as either prohibiting or limiting the City from pursuing such other remedies or penalties, including an action at law or equity. (Ord. 94-1 §1)

Secs. 7-97—7-110. Reserved.

ARTICLE V

Animals

Sec. 7-111. Cruelty to animals.

Any person who inhumanely, unnecessarily or cruelly beats, injures, neglects or otherwise abuses any dumb animal within the City shall be deemed guilty of a misdemeanor. (Ord. 95-17 §1)

Secs. 7-112—7-130. Reserved.

ARTICLE VI

Property Contaminated by Illegal Drug Laboratory

Sec. 7-131. Definitions.

As used in this Article, the following terms shall have the following meanings except where the context clearly indicates a different meaning:

Board means the State Board of Health in the Department of Public Health and Environment.

Contaminated means to have been made impure, unclean or potentially hazardous because of exposure to chemicals or by-products used to make methamphetamine or other controlled substances as defined by Section 18-18-102, C.R.S.

Drug laboratory means the areas where methamphetamine or controlled substances have been manufactured, processed, cooked, disposed of or stored and all proximate areas that are likely to be contaminated as a result of such manufacturing, processing, cooking, disposing or storing.
**Sec. 7-132. Owners of contaminated property.**

(a) If all or a portion of a property or a structure thereon has been determined to be contaminated or if a governing body or law enforcement agency issues a notice of probable contamination for the entire property, the owner of that property shall:

(1) Ensure that the property or the necessary portion thereof is placarded or in some other manner clearly indicates to the general public that it is an unsafe building and persons are prohibited from entry under applicable provisions of this Code.

(2) Take all other reasonable measures, including the fencing off of the property, to make the property or a portion thereof inaccessible to persons for occupancy or intrusion.

(3) Within thirty (30) days of the property being deemed contaminated or within thirty (30) days from the issuance date of a notice of probable contamination, the property owner shall either:

   a. Commence clean up or remediation of the property within the standards established by the Board in Section 25-18.5-102, C.R.S., or

   b. Commence demolition of the property as permitted by Section 25-18.5-103(1), C.R.S. If the owner elects to demolish the property, he or she shall ensure that the property is fenced off or otherwise made inaccessible to persons for occupancy or intrusion.

(4) The property owner shall obtain all necessary permits for the decontamination, remediation and/or demolition of the property, which work shall be completed no later than one hundred twenty (120) days from the date of the property being deemed contaminated or from the issuance of a notice of probable contamination.

(5) The requirements of this Section shall apply to a property containing a single-family dwelling if any portion of that dwelling is determined to be contaminated or if a governing body or law enforcement agency issues a notice of probable contamination for any portion of that dwelling.

(b) If only a portion of a property is determined to be contaminated, or has had a notice of probable contamination issued regarding it, the property owner shall comply with the requirements of this Section. These requirements shall only apply in regards to the portion of the property deemed contaminated or that is the subject of a notice of probable contamination. Nothing in this Article shall be interpreted to require a property owner to prohibit access to portions of his or her property that are not deemed contaminated. However, this Subsection shall not apply to a property containing a single-family dwelling.

(c) Any violation of this Section shall be punishable as provided in Subsection 1-73(a) of this Code. (Ord. 2006-13 §1)
Sec. 7-133. Occupancy of a contaminated property.

(a) Any portion of a property that has been declared contaminated under this Article or state law or has had a notice of probable contamination issued regarding it may not be occupied until the contaminated area meets the cleanup standards set by the Board and the City has inspected and tested the property as authorized in Section 7-134 below.

(b) After the completion of a preliminary assessment conducted pursuant to Board Regulations, a property owner that demonstrates that only a portion of a property is determined to be contaminated, the governing body may permit the property owner to allow members of the general public to access and use those parts of the property which are determined not to be contaminated. This Subsection shall not apply to a property containing a single-family dwelling.

(c) An owner of any personal property within a structure or vehicle contaminated as described herein shall have ten (10) days after the date of discovery of the laboratory or contamination to remove or clean his or her personal property according to Board rules. If the personal property owner fails to remove the personal property within ten (10) days, the owner of the structure or vehicle may dispose of the personal property during the clean up process without liability to the owner of the personal property for such disposition. (Ord. 2006-13 §1)

Sec. 7-134. Inspection and testing.

Once a property owner has met the clean-up standards established by the Board, as evidenced by a test performed by a certified industrial hygienist or an industrial hygienist as defined by Section 24-30-1402, C.R.S., and as evidenced by the results which shall be provided to the governing body, or has demolished the property, the City may inspect the property and conduct tests to ensure that it meets the cleanup standards set by the Board, or if the property has been demolished, that it no longer is contaminated. The City shall charge the property owner for the actual costs of the inspection and/or tests plus fifteen percent (15%) of the costs for the inspection and/or tests. Failure to pay said costs shall be a violation of this Article. (Ord. 2006-13 §1)

Sec. 7-135. Contaminated properties deemed a public nuisance.

A contaminated drug laboratory that has not met the cleanup standards set by the Board referenced in Section 7-132 of this Article, or has not been demolished within thirty (30) days of being deemed contaminated or within thirty (30) days from the issuance date of a notice of probable contamination, is deemed to be a public nuisance. If the property owner has failed to clean up or demolish the contaminated structure within the thirty-day time frame, the City may proceed to have the nuisance abated from the property without delay as specified by Section 7-4 of this Chapter and the assessment and collection of costs of abatement provisions of Section 7-6 of this Chapter shall be applicable. (Ord. 2006-13 §1)

Secs. 7-136—7-150. Reserved.

ARTICLE VII
Smoking Regulations

Sec. 7-151. Purpose and intent.

The Board of Aldermen hereby finds and determines that it is in the best interest of the people of the City to protect nonsmokers from involuntary exposure to environmental tobacco smoke in most indoor areas open to the public, public meetings, food service establishments and places of employment. The Board of Aldermen
further finds and determines that a balance should be struck between the health concerns of nonconsumers of tobacco products and the need to minimize unwarranted governmental intrusion into, and regulation of, private spheres of conduct and choice with respect to the use or nonuse of tobacco products in certain designated public areas and in private places. Therefore, the Board of Aldermen hereby declares that the purpose of this Article is to preserve and improve the health, comfort and environment of the people of this City by limiting exposure to tobacco smoke. These regulations cover the same subject matter as the provisions of the Colorado Clean Air Act and shall be enforced in Municipal Court. (Ord. 2007-8 §1)

Sec. 7-152. Definitions.

As used in this Article, the following terms shall have the following meanings:

*Balcony* means an outdoor platform that projects from the wall of a building and is surrounded by a railing, balustrade or parapet.

*Bar* means any indoor area that is operated and licensed under Article 3 of Title 44, C.R.S., primarily for the sale and service of alcohol beverages for on-premises consumption and where the service of food is secondary to the consumption of such beverages.

*Cigar-tobacco bar* means a bar that, in the calendar year ending December 31, 2005, generated at least five percent (5%) or more of its total annual gross income or fifty thousand dollars ($50,000.00) in annual sales from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines. In any calendar year after December 31, 2005, a bar that fails to generate at least five percent (5%) of its total annual gross income or fifty thousand dollars ($50,000.00) in annual sales from the on-site sale of tobacco products and the rental of on-site humidors shall not be defined as a *cigar-tobacco bar* and shall not thereafter be included in the definition regardless of sales figures.

*Employee* means any person who, regardless of whether such person is referred to as an employee, contractor, independent contractor or volunteer or by any other designation or title:

a. Performs any type of work for the benefit of another in consideration of direct or indirect wages or profit; or

b. Provides uncompensated work or services to a business or nonprofit entity.

*Employer* means any person, partnership, association, corporation or nonprofit entity that employs one (1) or more persons. *Employer* includes, without limitation, the judicial branches of state government; any county, city and county, city or town, or instrumentality thereof, or any other political subdivision of the State, special district, authority, commission or agency; or any other separate corporate instrumentality or unit of state or local government.

*Entryway* means the outside of the front or main doorway leading into a building or facility and includes an area, public or private, radiating one (1) inch from the frame of the doorway.

*Environmental tobacco smoke* means the complex mixture formed from the escaping smoke of a burning tobacco product, also known as *side stream smoke*, and smoke exhaled by the smoker.

*Food service establishment* means any indoor area or portion thereof in which the principal business is the sale of food for on-premises consumption. The term includes, without limitation, restaurants, cafeterias, coffee shops, diners, sandwich shops and short-order cafes.
**Indoor area** means any enclosed area or portion thereof. The opening of windows or doors or the temporary removal of wall panels does not convert an indoor area into an outdoor area.

**Outdoor area** means any patio, balcony, outdoor stage or other area that is located in the open air, as determined by the Chief Building Official;

**Patio** means an outdoor space for dining or recreation that adjoins a building and is often paved.

**Place of employment** means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services for, or on behalf of, the employer.

**Public building** means any building owned or operated by:

a. The State, including the legislative, executive and judicial branches of state government.

b. Any county, city and county, city or town, or instrumentality thereof, or any other political subdivision of the State, a special district, an authority, a commission or an agency.

c. Any other separate corporate instrumentality or unit of state or local government.

**Public meeting** means any meeting open to the public pursuant to Part 4 of Article 6 of Title 24, C.R.S.

**Smoke or smoking** means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco.

**Smoke-free work area** means an indoor area in a place of employment where smoking is prohibited under this Article.

**Tobacco** means cigarettes, cigars, cheroots, stogies and periques; granulated, plug-cut, crimp-cut, ready-rubbed, and other smoking tobacco; snuff and snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a cigarette, pipe or otherwise, or both for chewing and smoking. Tobacco also includes cloves and any other plant matter or product that is packaged for smoking.

**Tobacco business** means a sole proprietorship, corporation, partnership or other enterprise engaged primarily in the sale, manufacture or promotion of tobacco, tobacco products or smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental.

**Work area** means an area in a place of employment where one (1) or more employees are routinely assigned and perform services for or on behalf of their employer.

(Ord. 2007-8 §1; Ord. 2018-20 §16)

**Sec. 7-153. General smoking restrictions.**

Except as provided in Section 7-154 below, it shall be unlawful for any person to smoke in any indoor areas, including but not limited to:

1. Public meeting places;
2. Elevators;
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(3) Government-owned or -operated means of mass transportation, including but not limited to buses, vans and trains;

(4) Taxicabs and limousines;

(5) Grocery stores;

(6) Gymnasiums;

(7) Jury waiting and deliberation rooms;

(8) Courtrooms;

(9) Child day care facilities;

(10) Health care facilities, including hospitals, health care clinics, doctor's offices and other health care-related facilities;

(11) Any place of employment that is not exempted;

(12) Food service establishments;

(13) Bars;

(14) Gaming facilities and any other facilities in which any gaming or gambling activity is conducted;

(15) Indoor sports arenas;

(16) Restrooms, lobbies, hallways, and other common areas in public and private buildings, condominiums, and other multi-ple-unit residential facilities;

(17) Restrooms, lobbies, hallways and other common areas in hotels and motels and in at least seventy-five percent (75%) of the sleeping quarters within a hotel or motel that are rented to guests;

(18) Bowling alleys;

(19) Billiard or pool halls;

(20) Facilities in which games of chance are conducted;

(21) The common areas of retirement facilities, publicly owned housing facilities and nursing homes, not including any resident's private residential quarters;

(22) Public buildings;

(23) Auditoria;

(24) Theaters;

(25) Museums;

(26) Libraries;

(27) Public and nonpublic schools;

(28) Other educational and vocational institutions; and

(29) The entryways of all buildings and facilities listed in Paragraphs (1) to (28) of this Section. (Ord. 2007-8 §1)

Sec. 7-154. Exceptions to smoking restrictions.

Smoking shall be permitted in the following places:

(1) Private homes, private residences and private automobiles, except if any such home, residence or vehicle is being used for child care or day care or if a private vehicle is being used for the public transportation of children or as part of health care or day care transportation.

(2) Limousines under private hire.
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(3) A hotel or motel room rented to one (1) or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed twenty-five percent (25%).

(4) Any retail tobacco business.

(5) A cigar-tobacco bar, provided that the cigar-tobacco bar shall not expand its size or change its location from the size and location in which it existed as of December 31, 2005, and provided that the cigar-tobacco bar displays signage in at least one (1) conspicuous place and at least four (4) inches by six (6) inches in size, stating: "Smoking allowed. Children under eighteen years of age must be accompanied by a parent or guardian."

(6) The outdoor area of any business.

(7) A place of employment that is not open to the public and that is under the control of an employer that employs three (3) or fewer employees. (Ord. 2007-8 §1)

Sec. 7-155. Optional prohibitions.

(a) The owner or manager of any place not specifically listed in Section 7-153 above, including a place otherwise exempted under Section 7-154, may post signs prohibiting smoking or providing smoking and nonsmoking areas. Such posting shall have the effect of including such place, or the designated nonsmoking portion thereof, in the places where smoking is prohibited or restricted pursuant to this Article.

(b) Every employee shall have the right to work in an area free of environmental tobacco smoke. If the owner or manager of a place not specifically listed in Section 7-153, including a place otherwise exempted under Section 7-154, receives a request from an employee to create a smoke-free work area, the owner or manager shall post a sign or signs indicating that the area shall be a smoke-free work area as provided in Subsection (a) above. (Ord. 2007-8 §1)

Sec. 7-156. Enforcement and penalties.

(a) It shall be unlawful for a person who owns, manages, operates or otherwise controls the use of a premises subject to this Article to violate any provision of this Article.

(b) It shall be unlawful for any person to smoke in an area where smoking is prohibited pursuant to this Article.

(c) Violations of any provision of this Article shall be punishable in accordance with the following:

(1) For a first violation occurring within a calendar year, a person shall be punished by a fine not to exceed two hundred dollars ($200.00).

(2) For a second violation occurring within a calendar year, a person shall be punished by a fine not to exceed three hundred dollars ($300.00).

(3) For each additional violation occurring within a calendar year, a person shall be punished by a fine not to exceed five hundred dollars ($500.00). (Ord. 2007-8 §1)

Secs. 7-157—7-170. Reserved.

ARTICLE VIII

Garbage Collection

Sec. 7-171. Residential collection requirements.

(a) During the period of May 1 to October 31 of each year, all residential garbage within the City shall be placed out for collection no earlier than 6:00 a.m. on the scheduled date of
collection. In the event that a given property's topography causes a property owner to be unable to comply with the provisions of this Section, the only containers that may be exempted from the provisions of this Section based on such topography are City-provided trash containers.

(b) During the period of November 1 to April 30 of each year, all residential garbage within the City shall be placed out for collection no earlier than 6:00 p.m. on the day before scheduled collection. In the event that a given property's topography causes a property owner to be unable to comply with the provisions of this Section, the only containers that may be exempted from the provisions of this Section based on such topography are City-provided trash containers. (Ord. 2007-15 §1; Ord. 2012-9 §1)

Secs. 7-172—7-199. Reserved.

ARTICLE IX

Carbon Monoxide Alarms

Sec. 7-200. Purpose and applicability.

(a) The purpose of this Article is to:

(1) Protect the health and safety of the residents of the City by requiring operational carbon monoxide detectors in residential rental occupancies.

(2) Reduce the number of injuries and fatalities resulting from carbon monoxide (CO) poisoning.

(b) This Article shall apply to all rental residential properties that contain any fuel-fired appliance, fuel-fired heater, fireplace or attached garage. (Ord. 2010-4 §1)

Sec. 7-201. Definitions.

For the purposes of this Article, the following terms shall have the following meanings:

Carbon monoxide alarm means a device that detects carbon monoxide and that:

a. Produces a distinct, audible alarm;

b. Is listed by a nationally recognized, independent product-safety testing and certification laboratory to conform to the standards for carbon monoxide alarms issued by such laboratory or any successor standards;

c. Is battery powered, plugs into a dwelling's electrical outlet and has a battery backup, is wired into a dwelling's electrical system and has a battery backup or is connected to an electrical system via an electrical panel; and

d. May be combined with a smoke-detecting device if the combined device complies with applicable law regarding both smoke-detecting devices and carbon monoxide alarms and if the combined unit produces an alarm, or an alarm and voice signal, in a manner that clearly differentiates between the two (2) hazards.

Dwelling unit means a single unit providing complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Fuel means coal, kerosene, oil, fuel gases or other petroleum products or hydrocarbon products such as wood that emit carbon monoxide as a by-product of combustion.
Installed means that a carbon monoxide alarm is placed in a dwelling unit in one (1) of the following ways:

a. Wired directly into the dwelling’s electrical system.

b. Directly plugged into an electrical outlet without a switch other than a circuit breaker; or

c. If the alarm is battery-powered, attached to the wall or ceiling of the dwelling unit in accordance with the National Fire Protection Association’s Standard 720, or any successor standard, for the operation and installation of carbon monoxide detection and warning equipment in dwelling units.

Multi-family dwelling means any improved real property used or intended to be used as a residence and that contains more than one (1) dwelling unit. Multi-family dwelling includes a condominium or cooperative.

Operational means working and in service in accordance with manufacturer instructions.

Single-family dwelling means any improved real property used or intended to be used as a residence and that contains one (1) dwelling unit. (Ord. 2010-4 §1)

Sec. 7-202. Required use of carbon monoxide alarms in rental properties.

In addition to any other requirements provided by law, an operational carbon monoxide alarm shall be installed within fifteen (15) feet of the entrance to each room lawfully used for sleeping purposes or in a location as specified in any City building code in any single-family dwelling or dwelling unit in a multi-family dwelling that is used for rental purposes and that contains any fuel-fired appliances, fuel-fired heater, fireplace or attached garage. (Ord. 2010-4 §1)

Sec. 7-203. Owner obligations.

The owner of any rental property specified in Section 7-202 above shall be required to perform all of the following:

(1) Provide for the installation of any carbon monoxide alarm;

(2) Prior to the commencement of a new tenant occupancy, replace any carbon monoxide alarm that was stolen, removed, found missing or found not operational after the previous occupancy;

(3) Ensure that any batteries necessary to make the carbon monoxide alarm are operational are provided to the tenant at the time the tenant takes residence in the dwelling unit;

(4) Replace any carbon monoxide alarm if notified by a tenant in writing that any carbon monoxide alarm was stolen, removed, found missing or found not operational during the tenant’s occupancy; and

(5) Fix any deficiency in a carbon monoxide alarm that cannot be corrected by the tenant and that the tenant has reported in writing to the owner or the owner’s authorized agent. (Ord. 2010-4 §1)

Sec. 7-204. Tenant obligations.

The tenant of any rental property specified in Section 7-202 above shall be required to perform all of the following:

(1) Keep, test and maintain all carbon monoxide alarms in good repair;
(2) Notify, in writing, the owner of the rental property, or his or her authorized agent, if the batteries of any carbon monoxide alarm need to be replaced;

(3) Notify, in writing, the owner of the rental property, or his or her authorized agent, if any carbon monoxide alarm is stolen, removed, found missing or found not operational during the tenant's occupancy of the unit; and

(4) Notify, in writing, the owner of the rental property, or his or her authorized agent, of any deficiency in any carbon monoxide alarm that the tenant cannot correct. (Ord. 2010-4 §1)

Sec. 7-205. Prohibited battery removal.

No person shall remove batteries from, or in any way render inoperable, a carbon monoxide alarm, except as part of a process to inspect, maintain, repair or replace the alarm or replace the batteries in the alarm. (Ord. 2010-4 §1)

Sec. 7-206. Enforcement and penalties.

(a) It shall be unlawful for any owner, tenant or other person who owns, manages, rents or is otherwise present in any property subject to this Article to violate any provision of this Article.

(b) Violations of any provision of this Article shall be punishable in accordance with Section 1-74 of this Code. (Ord. 2010-4 §1)

Secs. 7-207—7-220. Reserved.

ARTICLE X
Sand and Oil Separators

Sec. 7-221. Purpose and applicability.

(a) The requirements established in this Article shall apply to sand/oil separator facilities for non-domestic dischargers built, constructed, or existing within the City.

(b) Non-domestic dischargers include automotive service facilities, machine shops, automotive care centers, auto body shops, car washes, parking garages, surface parking lots, or any other facility that generates sand, petroleum oil, grease or other petroleum product, grit, gravel or other aggregate that may discharge into a stormwater collection system. Access to the stormwater collection system is often via inlets and floor drains located inside shop areas and parking garages and lots that are not limited to non-polluting wastewater sources; such drains must be connected to a sand/oil separator.

(c) All facilities subject to this Article must comply with the requirements of this Article. (Ord. 2016-13 §1)
(b) The sand/oil separators shall be designed, sized, installed, maintained and operated so as to accomplish their intended purpose of intercepting pollutants from the facility user's stormwater and preventing the discharge of such pollutants to the City's stormwater collection system.

(c) Upon change of ownership of any existing facility which would be required to have a sand/oil separator facility under this Section, the applicant shall have the burden to demonstrate that a properly sized and functioning sand/oil separator facility is installed.

(d) Toilets, urinals and similar fixtures shall not waste or otherwise discharge through a sand/oil separator. Such fixtures shall be plumbed directly into the building sewer and waste system.

(e) The user shall ensure all sand/oil separators are easily accessible for inspection, cleaning, and removal of sand and oil.

(f) The facility user shall maintain the sand/oil separator at its own expense and keep in efficient operating condition at all times by the regular removal of sand and oil. (Ord. 2016-13 §1)

Sec. 7-223. Required maintenance.

(a) Sand/oil separators shall be maintained by regularly scheduled cleaning to provide for their operation as intended to efficiently separate the sand and oil from the facility's stormwater system. A sand/oil separator shall be serviced at a minimum once every calendar year.

(b) The City may require more frequent cleaning if such more frequent cleaning is determined by be necessary in the discretion of the Public Works Director. The Public Works Director may also approve a waiver from the minimum maintenance interval requirement if the user can demonstrate less frequent cleaning is necessary.

(c) The facility user shall provide an annual inspection report to the City of Black Hawk Public Works Department by January 31 for the preceding year regarding the maintenance of the sand/oil separators. The report shall indicate the level of sand and oil in the interceptors, the date of cleaning or inspection, the approximate gallons of oil and debris removed (if cleaned), and the method of disposal (if cleaned). Upon reviewing the annual inspection report, the Public Works Director shall have the discretion to determine if additional maintenance is required.

(d) Along with the annual inspection report required hereunder, the facility user shall provide a proposed schedule (subject to change due to weather conditions, truck availability, and other conditions beyond the facility user's control) for regularly scheduled inspection and maintenance in accordance with the City's rules and specifications. Pumping and maintenance of the sand/oil separators shall not unreasonably interfere with the operations of any City service, or unreasonably adversely impact traffic circulation.

(e) Maintenance of sand/oil separators shall be undertaken only by a business/professional normally engaged in the servicing of such plumbing fixtures. In the event a separator is not properly maintained by its user, owner, lessee, or other authorized representative of the facility, the City may authorize such maintenance work be performed on behalf of the separator user. The City will provide notice prior to any maintenance work performed. The costs of such maintenance and an administration fee shall be billed directly to the separator user or property owner and shall become part of the charges due and owed to the City and the City shall have the right to constitute a lien against the property until paid in full.
(f) The facility user must take reasonable steps to assure that all waste is properly disposed of at a facility in accordance with Federal, State and local regulations (i.e., through a certification by the hauler included on the waste manifest or trip ticket for each load).

(g) The sand/oil separator user shall be responsible for cleanup of any spills due to pumping, maintenance, or repair of any separator on private or public property after the maintenance activity. All surfaces shall be cleaned and restored to City standards, and all costs of repair, maintenance, restoration and/or cleanup caused by a facility will be that facility user's responsibility. (Ord. 2016-13 §1)
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Vehicles and Traffic

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ARTICLE I

Model Traffic Code

Sec. 8-1. Adoption.

Pursuant to Title 31, Article 16, Part 2, C.R.S., there is hereby adopted by reference the 2018 edition of the Model Traffic Code for Colorado, promulgated and published as such by the Colorado Department of Transportation, Safety and Traffic Engineering Branch, 4201 East Arkansas Avenue, EP 700, Denver, Colorado 80222, as modified in Section 8-2 below. Three (3) copies of the Model Traffic Code adopted herein are now filed in the office of the City Clerk and may be inspected during regular business hours, the same being adopted as if set out at length, save and except for the following sections, which are declared to be inapplicable to the City and are therefore expressly deleted or modified. (Ord. 2012-7 §1; Ord. 2019-11 §1)

Sec. 8-2. Additions, deletions and modifications.

The adopted Model Traffic Code is subject to the following additions, deletions and modifications:

(1) Section 105 is hereby deleted in its entirety.

(2) Section 108 is amended by the addition of the following paragraph (5):

"(5) The provisions of this Section 108 shall be applicable solely and only to the drivers of vehicles that are owned and operated by the City of Black Hawk, the Gilpin County Sheriff, any authorized state or federal agency and any ambulance company licensed to provide emergency ambulance service in either the City of Black Hawk or in Gilpin County or the driver of any vehicle authorized by the Black Hawk Chief of Police or designee. No driver of any private vehicle or any vehicle owned or operated by any other municipality or other governmental entity, except as specified herein, shall be entitled to rely on the provisions of this Section 108 while operating a motor vehicle upon a local street or other public way within the City of Black Hawk, it being the duty and obligation of all such drivers to comply with all traffic laws and regulations of the City while operating any vehicle within the boundaries of the City."

(3) [Reserved].

(4) Section 110(4) is modified to read as follows:

"(4) The appropriate local court shall have jurisdiction over violations of traffic regulations enacted or adopted by the Board of Aldermen."

(5) In Subsection 223(1), all references to "Section 235(1)(a)" are modified to read "Section 42-4-235(1)(a), C.R.S."

(6) In Subsection 225(3), the references to "Section 205(5.5)(a)" is modified to read "Section 43-4-205(5.5)(a), C.R.S."

(7) In Subsection 228(5)(c)(III), the reference to "Section 235(1)(a)" is modified to read "Section 42-4-235(1)(a), C.R.S."

(8) In Subsection 229(4), the reference to "Section 219" is modified to read "Section 42-3-219, C.R.S."

(9) In Subsection 236(1)(a), the reference to "Code 6" is modified to read "Article 6."

(10) In Subsection 237(3)(g), the reference to "Section 235(1)(a)" is modified to read "Section 42-4-235(1)(a), C.R.S."
(11) In Subsection 238(1), the reference to "Section 42-1-102(6)" is modified to read "Section 42-1-102(6), C.R.S."

(12) Section 239 is amended as set forth below:

(a) In Subsection (5), all references to "Section 42-4-1701(3)" are modified to reference "Section 42-4-1701(3), C.R.S."

(b) Subsection (6)(b) is modified to read as follows:

"(6)(b) An operator of a motor vehicle shall not be cited for a violation of subsection (3) of this Section unless a law enforcement officer saw the operator use a wireless telephone for the purpose of engaging in text messaging or other similar forms of manual data entry or transmission in a manner that caused the operator to drive in a careless and imprudent manner, without due regard for the width, grade, curves, corners, traffic, and use of the streets and highways and all other attendant circumstances, as prohibited by Section 42-4-1402, C.R.S."

(13) In Subsection 504(4), the reference to "Section 42-4-510" is modified to read "Section 42-4-510, C.R.S."

(14) Section 602 is hereby deleted in its entirety.

(15) In Subsection 604(1)(a)(III), the reference to "Section 42-4-802" is modified to read "Section 42-4-802, C.R.S."

(16) In Subsection 608(1), the reference to "Section 42-4-903" is modified to read "Section 42-4-903, C.R.S.," and the reference to "Section 42-4-609" is modified to read "Section 42-4-609, C.R.S."

(17) In Subsection 613, the reference to "Code 4" is modified to read "Article 4."

(18) Subsection 614(1)(a) is modified to read as follows:

"(1)(a) If maintenance, repair, or construction activities are occurring or will occur within four (4) hours on a portion of a state highway, the department of transportation may designate such portion of the highway as a highway maintenance, repair, or construction zone. Any person who commits the equivalent to certain State violations listed in Section 42-4-1701(4), C.R.S., in a maintenance, repair, or construction zone that is designated pursuant to this Section is subject to the increased penalties and surcharges imposed by Section 42-4-1701(4)(c), C.R.S."

(19) Subsection 614(1)(b) is modified to read as follows:

"(1)(b) If maintenance, repair, or construction activities are occurring or will occur within four (4) hours on a portion of roadway that is not a state highway, the public entity conducting the activities may designate such portion of the roadway as a maintenance, repair, or construction zone. A person who commits the equivalent to certain State violations listed in Section 42-4-1701(4), C.R.S., in a maintenance, repair, or construction zone that is designated pursuant to this Section is subject to the increased penalties and surcharges imposed by Section 42-4-1701(4)(c), C.R.S."

(20) In Subsection 615(1), the reference to "Section 1701(4)(d)" is modified to read "Section 42-4-1701(4)(d), C.R.S."

(21) In Subsection 705(3)(b), the reference to "Section 42-4-1402" is modified to read "Section 42-4-1402, C.R.S."
(22) In Subsection 805(5), the reference to "Section 111" is modified to read "Section 42-4-111, C.R.S." and the reference to "Section 111(2)" is modified to read "Section 42-4-111(2), C.R.S."

(23) In Subsection 1010(1), the reference to "Section 42-4-902" is modified to read "Section 42-4-902, C.R.S."

(24) Section 1010(3) is modified to read as follows:

"(3) Local authorities may by ordinance, consistent with the provisions of Section 43-2-135(1)(g), C.R.S., with respect to any controlled-access highway under their respective jurisdictions, prohibit the use of any such highway by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic. After adopting such prohibitory regulations, local authorities, or their designees, shall install official traffic control devices in conformity with the standards established by Section 601 at entrance points or along the highway on which such regulations are applicable. When such devices are so in place, giving notice thereof, no person shall disobey the restrictions made known by such devices."

(25) In Subsection 1012(3)(b), the references to "Section 1701(4)(a)(I)(K)" is modified to read "Section 42-4-1701(4)(a)(I)(K), C.R.S."

(26) Subsections (1), (2), and (4) of Section 1101 are deleted in their entirety and the following Section 1101, subsection (1), is substituted totally therefor:

"1101(1). Speed laws applicable. The Board of Aldermen has determined that the following prima facie speed limits should be applicable on the streets and roadways in the City and speed in excess of such limits shall be prima facie evidence that such speed is unlawful and a violation of this Article.

(a) Upon the basis of engineering and traffic investigations and determinations made by the Colorado Department of Transportation on streets which are state highways, and the City concurring therein, it is hereby declared that standard signs now erected give notice of the reasonable and true prima facie speed limit on those portions of said highways within the corporate limits of the City. According the following reasonable and prima facie speed limits shall be:

<table>
<thead>
<tr>
<th>Name of Street (State Highway)</th>
<th>Direction of Travel</th>
<th>Portion Affected (Terminal Limits)</th>
<th>Miles Per Hour Speed Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Hawk Street</td>
<td>Eastbound &amp; Westbound</td>
<td>From Junction of Highway 117 to Gregory Street</td>
<td>20</td>
</tr>
<tr>
<td>Church Street</td>
<td>Northbound &amp; Southbound</td>
<td>Entire length of road</td>
<td>10</td>
</tr>
<tr>
<td>Dory Hill Road</td>
<td>Northbound &amp; Southbound</td>
<td>From North limit to Haul Road and beginning of Richman Street</td>
<td>25</td>
</tr>
<tr>
<td>Miners' Mesa Road</td>
<td>Eastbound &amp; Westbound</td>
<td>From Main to Bobtail</td>
<td>15</td>
</tr>
<tr>
<td>Miners' Mesa Road</td>
<td>Eastbound &amp; Westbound</td>
<td>From Bobtail to top of Miners' Mesa</td>
<td>25</td>
</tr>
</tbody>
</table>

(b) Signs shall be displayed on all other streets regarding either 'Speed Limit 15,' or 'all streets 15 M.P.H. unless otherwise posted.' The said 15 M.P.H. signs shall appear on all arterial entrances to the City, including state highway entrances.
Colorado Department of Transportation shall establish the speed limits on State Highway 119 (Clear Creek Street) for the entire length of the highway.

(c) Except when a special hazard exists that requires lower speed than hereinafore set forth, the foregoing speed limits are reasonable and prima facie speed limits.

(d) Unless specifically provided to the contrary, all reference to 'City Limit' in Section 1101(1) shall mean the existing City limit. It is in the intention of the Board of Aldermen that the provisions of Section 1101(1) shall apply to the entire area within the City, including recently annexed territory and territory which may be annexed in the future upon the effective date of any annexation.

(27) Subsection 1105(7)(c) is modified to read as follows:

"(c) The failure of the owner of the immobilized motor vehicle to request removal of the immobilization device and pay the fee within fourteen (14) days after the end of the immobilization period ordered by the court or within the additional time granted by the court pursuant to paragraph (d) of this subsection (7), whichever is applicable, shall result in the motor vehicle being deemed an 'abandoned vehicle,' as defined in Section 1802(1)(d) and Section 42-4-2102, C.R.S., and subject to the provisions of part 18 of this Code and part 21 of article 4 of Title 42, C.R.S., whichever is applicable. The law enforcement agency entitled to payment of the fee under this subsection (7) shall be eligible to recover the fee if the abandoned motor vehicle is sold, pursuant to Section 1809(2)(b.5) or Section 42-4-2108(2)(a.5), C.R.S."

(28) Subsection 1105(8) is modified to read as follows:

"(b) No person may remove the immobilization device at the end of the immobilization period except the law enforcement agency that placed the immobilization device and that has been requested by the owner to remove the device and to which the owner has properly paid the fee required by subsection (7) of this section. Nothing in this subsection (8) shall be construed to prevent the removal of an immobilization device in order to comply with the provisions of part 18 of this Code or part 21 of Article 4 of Title 42, C.R.S."

(29) Section 1204 shall be modified by the addition of Subsection 1204(1)(I) to read as follows:

"(I) Within emergency access lanes designated pursuant to powers designated to the City under state law, so as to obstruct designated and marked emergency access lanes anywhere within the municipality of the City of Black Hawk. This prohibition against stopping, standing, or parking a vehicle within said designated emergency access lanes shall be applicable to all property, whether public or private within the City of Black Hawk, and shall prohibit the parking, stopping or standing of any vehicle within said emergency access lanes except emergency vehicles (i.e., police cars, fire department vehicles, ambulances, EMT vehicles, etc.) during the answering of an emergency call."

(30) Section 1208 shall be modified by deleting the existing Section 1208 and substituting in its place the following:

"1208. Parking for persons with mobility handicaps."
(a) Any motor vehicle with distinguishing license plates or an identifying placard obtained by a person with a mobility handicap as prescribed by law, may be parked in a parking space identified as being reserved for use by the handicapped, whether on public property or private property available for public use; or in any public parking area along any public street in one and two-hour limit zones or at parking meters during hours parking is permitted regardless of any time limitation imposed upon parking along such streets.

(b) It shall be unlawful for persons with mobility handicaps to be parked along public streets, or in designated parking spaces on public or private property:

(1) During such times when all stopping, standing, or parking of all vehicles is prohibited;

(2) When only special vehicles may be parked; or

(3) When parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(c) The owner of private property available for public use may install signs prescribed by the traffic engineer identifying parking spaces designated to specifications of the traffic engineer and reserved for use by the handicapped. Such installations shall be a waiver of any objection the owner may assert concerning enforcement of this Section by officers, or parking control persons, and said persons are hereby authorized and empowered to enforce this Section of the code.

(d) It shall be unlawful for any person who does not have a mobility handicap to exercise the parking privilege defined in this section.

(e) It shall be unlawful for any motor vehicle without distinguishing license plates or any identifying placard obtained by a person with mobility handicap as prescribed by law to be parked in a parking space identified as being reserved for use by the handicapped. Notwithstanding any other provision of the Model Traffic Code, the penalty resulting from conviction of a violation of this Section 1208 or any subpart thereof shall be a fine of not less than fifty dollars ($50.00) nor more than four hundred ninety-nine dollars ($499.00). In enforcing this Section 1208, the municipal court shall not have the authority to suspend all or any part of any fine or violation hereof so as to result in a fine of less than fifty dollars ($50.00), it being the intent of Board of Aldermen of the City of Black Hawk that Section 1208 of this Code be strictly and diligently enforced so as to provide adequate parking of persons with mobility handicaps free from the interference of those not so handicapped."

(31) In Subsection 1210(1), the reference to "Section 42-1-102(64)" is modified to read "Section 42-1-102(64), C.R.S."

(32) In Subsection 1401(1), the reference to "Section 127" is modified to read "Section 42-2-127, C.R.S."

(33) In Section 1402(1), the reference to "Section 127" is modified to read "Section 42-2-127, C.R.S."

(34) In Subsection 1406(5)(b)(II), the reference to "Section 1701(4)(a)(I)(N)" is modified to read "Section 42-4-1701(a)(I)(N), C.R.S."

(35) In Subsection 1408(1), the reference to "Code 1" is modified to read "Article 1" and reference to "Code 20" is modified to "Article 20."
(36) In Subsection 1409(4)(a), all references to "Section 42-4-1701(3)(a)(II)(A)" are modified to read "Section 42-4-1701(3)(a)(II)(A), C.R.S."

(37) In Subsection 1409(6), all references to "Section 42-7-602" are modified to read "Section 42-7-602, C.R.S."

(38) In Section 1412, all references "Section 111" are modified to read "Section 42-4-111, C.R.S.;" the references to "Code 10" is modified to read "Article 10;" and all references to "Section 127" are modified to read "Section 42-4-127, C.R.S."

(39) In Section 1415, the reference to "Section 42-4-1701(3)(a)(II)(A)" is modified to read "Section 42-4-1701 (3)(a)(II)(A), C.R.S."

(40) Section 1701 is deleted in its entirety. Any references to Section 1701 shall be deemed to refer to Section 8-5 of this Article.

(41) Section 1706 shall be modified by deleting the existing Section 1706 and substituting in its place the following:


(1) Notwithstanding any other provision of law, a child, as defined in Section 19-1-103 (18), C.R.S., convicted of a misdemeanor traffic offense under this Code, violating the conditions of probation imposed under this Code, or found in contempt of court in connection with a violation or alleged violation under this Code shall not be confined in a jail, lockup, or other place used for the confinement of adult offenders if the court with jurisdiction is located in a county in which there is a juvenile detention facility operated by or under contract with the department of human services that shall receive and provide care for such child or if the jail is located within forty miles of such facility. The court imposing penalties under this Section may confine a child for a determinate period of time in a juvenile detention facility operated by or under contract with the department of human services. If a juvenile detention facility operated by or under contract with the department of human services is not located within the county or within forty miles of the jail, a child may be confined for up to forty-eight hours in a jail pursuant to Section 19-2-508(4), C.R.S.

(2)(a) Notwithstanding any other provision of law, a child, as defined in Section 19-1-103 (18), C.R.S., arrested and incarcerated for an alleged misdemeanor traffic offense under this Code, and not released on bond, shall be taken before a county judge who has jurisdiction of such offense within forty-eight (48) hours for fixing of bail and conditions of bond pursuant to Section 19-2-508 (4)(d), C.R.S. Such child shall not be confined in a jail, lockup, or other place used for the confinement of adult offenders for longer than seventy-two (72) hours, after which the child may be further detained only in a juvenile detention facility operated by or under contract with the department of human services. In calculating time under this subsection (2), Saturdays, Sundays, and court holidays shall be included.

(b) In any case in which a child is taken before a county judge pursuant to paragraph (a) of this subsection (2), the child's parent or legal guardian shall immediately be notified by the court in which the county judge sits. Any person so notified by the court under this paragraph (b) shall comply with the provisions of Section 42-4-1716 (4), C.R.S."
(42) Section 1709 shall be modified by deleting the existing Section 1709 and substituting in its place the following:

"1709. Penalty assessment notice for traffic offenses—violations of provisions by officer—driver's license.

(1) Whenever a penalty assessment notice for a traffic infraction is issued, the penalty assessment notice which shall be served upon the defendant by the peace officer shall contain the name and address of the defendant, the license number of the vehicle involved, if any, the number of the defendant's driver's license, if any, a citation of the statute alleged to have been violated, a brief description of the traffic infraction, the date and approximate location thereof, the amount of the penalty prescribed for such traffic infraction, the amount of the surcharge thereon pursuant to Section 24-4.2-104 (1), C.R.S., the number of points, if any, prescribed for such traffic infraction pursuant to Section 42-2-127, C.R.S., and the date the penalty assessment notice is served on the defendant; shall direct the defendant to appear in a specified county court at a specified time and place in the event such penalty and surcharge thereon is not paid; shall be signed by the peace officer; and shall contain a place for the defendant to elect to execute a signed acknowledgment of liability and an agreement to pay the penalty prescribed and surcharge thereon within twenty days, as well as such other information as may be required by law to constitute such penalty assessment notice to be a summons and complaint, should the prescribed penalty and surcharge thereon not be paid within the time allowed in Section 42-4-1701, C.R.S.

(1.5) A penalty assessment notice issued and served pursuant to subsection (1) of this Section on a minor under the age of eighteen (18) years shall also contain or be accompanied by a document containing:

(a) A preprinted declaration stating that the minor's parent or legal guardian has reviewed the contents of the penalty assessment notice with the minor;

(b) Preprinted signature lines following the declaration on which the reviewing person described in paragraph (a) of this subsection (1.5) shall affix his or her signature and for a notary public to duly acknowledge the reviewing person's signature; and

(c) An advisement to the minor that:

(I) The minor shall, within seventy-two hours after service of the penalty assessment notice, inform his or her parent or legal guardian that the minor has received a penalty assessment notice;

(II) The parent or legal guardian of the minor is required by this Code to review and sign the penalty assessment notice and to have his or her signature duly acknowledged by a notary public; and

(III) Noncompliance with the requirement set forth in subparagraph (II) of this paragraph (c) shall result in the minor and the parent or legal guardian of the minor being required to appear in court pursuant to sections 1710 (1)(b), 1710 (1.5), and 1716 (4).

(2) One copy of said penalty assessment notice shall be served upon the defendant by the peace officer and one copy sent to the clerk of the court and such other copies sent as may be required by ordinance or the court.
(3) The time specified in the summons portion of said penalty assessment notice must be at least thirty (30) days, but not more than ninety (90) days after the date such penalty assessment notice is served, unless the defendant shall demand an earlier hearing.

(4) The place specified in the summons portion of said penalty assessment notice must be a court within the county in which the traffic infraction is alleged to have been committed.

(5) Whenever the defendant refuses to accept service of the penalty assessment notice, tender of such notice by the peace officer to the defendant shall constitute service thereof upon the defendant."

(43) In Section 1805, all references to "part 1 of Code 6 of this title" is modified to read "part 1 of article 6 of title 42, C.R.S."

(44) In Section 1814, the reference to "Section 42-13-106" is modified to read "Section 42-13-106, C.R.S."

(45) Section 1412, subsection (6), is deleted in its entirety and substituting in this place the following language:

"(6) Persons operating bicycles or electrical assisted bicycles upon roadways shall ride single file, except that riding no more than two abreast is permitted when riding on paths or parts of roadways set aside for the exclusive use of bicycles."

(Ord. 2012-7 §2; Ord. 2013-26 §1; Ord. 2017-16 §1; Ord. 2019-11 §2)

Sec. 8-3. Application.

This Article shall apply to every street, alley, sidewalk area, driveway, park and every other public way or public parking area, either within or outside the corporate limits of the City, the use of which the City has jurisdiction and authority to regulate. The provisions of Sections 1401, 1402, 1413 and 606 of the adopted Model Traffic Code, respectively, concerning reckless driving, careless driving, eluding and unauthorized devices, shall apply not only to public places and ways, but also throughout the City. (Ord. 2012-7 §3)

Sec. 8-4. Through streets.

In accordance with the provisions of Section 703 of the adopted Model Traffic Code, and when official signs are erected giving notice thereof, drivers of vehicles shall stop or yield as required by said signs at every intersection before entering any of the following streets or parts of streets:

<table>
<thead>
<tr>
<th>Name of Street</th>
<th>PortionAffected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Hawk Street</td>
<td>From junction of Highway 119 to Gregory Street</td>
</tr>
<tr>
<td>Gregory Street</td>
<td>West limit of Black Hawk Street to west City limits</td>
</tr>
<tr>
<td>Clear Creek Street</td>
<td>From east City limits to north City limits</td>
</tr>
</tbody>
</table>

(Ord. 78-1 §7; Ord. 98-61 §1; Ord. 04-5 §1)

Sec. 8-5. Penalties.

(a) It shall be unlawful for any person to violate any of the provisions stated or adopted in this Article.

(b) Failure to comply with the terms of this Article shall constitute a civil infraction, except for violations of Section 239(3), Misuse of a Wireless Telephone; Section 1105, Contest Prohibited; Section 1401, Reckless Driving; and Section 1413, Eluding or Attempting to Elude Police Officer, of the Model Traffic Code which shall constitute a criminal violation. Except for parking violations, any person who is found guilty of or pleads guilty or nolo contendere to the commission of a civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. Except as set forth in Subsection (d) below, any person who is found guilty
of or pleads guilty or nolo contendere to a criminal violation shall be subject to a criminal penalty as set forth in Section 1-73 of this Code.

(c) The Municipal Court shall report its entry of a default judgment, a plea of guilty or no contest, a conviction or a forfeiture of bail against every person concerning any charge specified in this Section, to the Colorado Department of Revenue, Motor Vehicles Division, pursuant to Section 42-4-1715, C.R.S., and the Motor Vehicles Division may thereafter assess penalty points against such person's driving privileges. Following such a report by the Municipal Court, the provisions of Section 42-4-1709(7), C.R.S., shall control any outstanding obligations to the Municipal Court.

(d) Any person found guilty or who pleads guilty or nolo contendere to a violation of Section 239(3), Misuse of Wireless Telephone, shall be subject to the following criminal penalty:

(1) Except as provided in Subsection (2) below, a minimum mandatory fine of not less than three hundred dollars ($300.00).

(2) If the person's actions are the proximate cause of bodily injury or death to another, a minimum mandatory fine of not less than three hundred dollars ($300.00) or imprisonment for a period of from ten (10) days to one (1) year, or both such fine and imprisonment; provided that where the person found guilty, who pleads guilty, or who pleads nolo contendere to a violation of Section 239(3) is under the age of eighteen (18) years at the time of the offense, such person shall not be subject to imprisonment for or on account of said violation. (Ord. 94-1 §1; Ord. 98-61 §1; Ord. 04-5 §1; Ord. 2017-16 §2)

Sec. 8-6. Weight limit.

(a) No person shall operate or drive a commercial vehicle, truck or semitrailer within the corporate limits of the City that has more than a twenty-thousand-pound gross weight.

(b) Exceptions.

(1) The weight limit set forth in Subsection (a) above shall not apply to the following: over-the-road coaches or other passenger buses, including but not limited to school buses on a designated school bus route; recreational vehicles properly permitted and otherwise in compliance with Article V of this Chapter; emergency vehicles; or vehicles traveling through the City exclusively via State Highway 119.

(2) A commercial vehicle, truck or semitrailer that exceeds the weight limit set forth in Subsection (a) that operates on City streets for the purpose of making deliveries that either commence or terminate within the City, or a commercial vehicle, truck or semitrailer that exceeds the weight limit set forth in Subsection (a) that is making deliveries to local residential properties. For purposes of this exception, local residential property shall mean a residential property in Gilpin County.

(3) Permits. A commercial vehicle, truck, or semitrailer that exceeds the weight limit set forth in Subsection (a) above that does not fall within the exceptions set forth in this Subsection (b) shall be required to obtain a permit from the City Manager or his or her designee according to the rules and regulations established by the City Manager, which may include an applicable permit fee associated with the impact of such traffic on the City's roadway system.

(c) Notwithstanding the exceptions contained in Subsection (b)(1) above, no vehicle with over a twenty-thousand-pound gross weight shall be permitted to park overnight within City limits unless such overnight parking is in compliance with Article V of this Chapter or is included as part of an approved site plan.

(d) Penalty. Each and every violation of the terms of this Section constitutes a new and separate violation and shall subject the owner
or operator of the vehicle to the civil penalties as set forth in Section 1-74 of this Code. (Ord. 2009-29 §1; Ord. 2012-7 §4)

Sec. 8-7. Unnecessary idling of delivery and commercial vehicles.

(a) No owner or operator of a delivery and/or commercial motor vehicle shall permit the engine of said vehicle under their direction or control to idle for a period in excess of five (5) minutes. It shall not be a violation under this Subsection (a) if a delivery and/or commercial vehicle idles in excess of five (5) minutes due to traffic congestion which is caused through no fault of the vehicle operator.

(b) For purposes of this Section, a delivery and/or commercial vehicle shall include any motor vehicle, truck, laden or unladen truck tractor, trailer or semitrailer designed or used for the purpose of transporting goods or cargo for profit, hire or otherwise in any business or commercial enterprise. (Ord. 97-46 §1; Ord. 04-5 §1)

Sec. 8-8. Driving under restraint prohibited.

Any person who drives a motor vehicle or off-highway vehicle upon any street or highway in the City of Black Hawk with knowledge that the person's license or privilege to drive, either as a resident or nonresident, is under restraint for an outstanding judgment is guilty of a civil infraction punishable according to Section 8-5 herein. (Ord. 2017-16 §3)

Editor's note: Ord. 2017-16 §3 shall be effective August 9, 2017.

Secs. 8-9—8-20. Reserved.

ARTICLE II

Parking

Sec. 8-21. Unlawful parking.

It shall be unlawful for any person to park or stand a vehicle, whether occupied or not, otherwise than temporarily for the purpose of, and while actually engaged in, loading or unloading, in a private driveway or on private property without the express or implied consent of the owner or person in lawful possession of such driveway or property. (Ord. 92-10 §1)

Sec. 8-22. Reporting of illegally parked vehicles.

Vehicles considered to be illegally parked on any parking lot or any private parking area shall be reported by the owner or manager of such parking lot or private parking area to the Police Department for the issuance of an appropriate parking citation. An illegally parked vehicle includes any vehicle parked in a public or private parking lot that has not paid a required parking fee, or a vehicle parked without the express or implied consent of the owner or person in lawful possession of such driveway or property. (Ord. 92-10 §2)

Sec. 8-23. Ticketing of vehicles.

(a) Illegally parked vehicles shall be ticketed only when a sufficient sign is conspicuously posted warning trespassing parkers; provided, however, that illegally parked vehicles in residential areas of the City may be ticketed even though a sign is not posted warning trespassing parkers. A sufficient sign is defined as follows:

(1) An upright permanent sign, not less than one (1) square foot in size, posted in a conspicuous location at each designated parking space within the parking area, warning that the trespassing parkers are subject to fine, and that vehicles illegally parked by them will be towed away; or

(2) A permanent sign, not less than two (2) square feet in size, and kept illuminated at night, posted in a conspicuous location or locations within not less than ten (10) feet of each entrance to the private parking area, warning trespassing parkers in lettering not
less than two (2) inches in height, that the trespassing parkers are subject to fine, and that vehicles illegally parked by them will be towed away.

(b) Any sign that is posted must also comply with Chapter 15 of this Code. (Ord. 92-10 §3)

Sec. 8-24. Penalty.

Every person convicted of or pleading guilty to a violation of any of the parking provisions set forth in the Model Traffic Code for Colorado, including Part 12 of the version of the Model Traffic Code as adopted by the City, shall be subject to a civil penalty not to exceed two hundred fifty-nine dollars ($259.00) for each violation, payable within thirty (30) days of the violation. The amount of the fine shall double if said penalty is not paid within the thirty-day period. (Ord. 2012-7 §5; Ord. 2018-36 §1)

Sec. 8-25. Responsibility of owner of leased vehicles.

The owner of a motor vehicle who is engaged in the business of leasing or renting motor vehicles is liable for the payment of a parking violation fine unless the owner of the leased or rented motor vehicle can furnish sufficient evidence that the vehicle was, at the time of the parking violation, in the care, custody or control of another person. To avoid liability for payment the owner of the motor vehicle is required, within twenty (20) days after notification of the parking violation, to furnish the Municipal Court the name and address of the person or company who leased, rented or otherwise had the care, custody or control of such vehicle. (Ord. 94-30 §1)

Sec. 8-26. Habitual parking offender and remedies.

(a) A habitual parking offender means any such person who has received three (3) or more citations for a violation or combination of violations under this Article, and who has failed to pay the outstanding balance of the civil penalty assessed upon said three (3) or more citations within thirty (30) days from each violation.

(b) The Chief of Police shall send a notice to each and every habitual parking offender by first class mail, postage prepaid, to the last known address of such person, stating that they are considered to be a habitual parking offender, that they have three (3) or more outstanding unpaid parking citations, that they may receive a summons to appear in Municipal Court to answer charges of being a habitual parking offender and that their vehicle may be immobilized and/or towed and impounded if found in the City limits before all outstanding fines and fees are paid in full.

(c) Whenever a habitual parking offender is found with a vehicle parked or stopped in violation of this Article, the Chief of Police shall issue a municipal summons compelling said person to respond to and answer charges of being a habitual parking offender in the Municipal Court within thirty (30) days from such service. A habitual parking offender who is convicted of or who pleads guilty or no contest to a violation under this Article shall be fined in an amount not less than the balance of all outstanding unpaid citations issued under this Article.

(d) The Chief of Police is hereby authorized to temporarily and for a period of seventy-two (72) hours immobilize any vehicle owned or driven by a habitual parking offender by installing thereon a device designed to restrict the normal movement of such vehicle, and if such vehicle is so immobilized, the authorized person so installing the device shall conspicuously affix to such vehicle a written notice advising the owner, driver or person in charge of such vehicle that such vehicle has been immobilized by the City for a violation under this Article; that release from such immobilization may be obtained at the Police Department; that unless
arrangements are made for the release of such vehicle within seventy-two (72) hours, the vehicle will be removed to an impound lot; that in the event of such removal the owner, driver or person in charge of such vehicle shall bear the costs of having the vehicle removed and impounded; and that a vehicle, once impounded, shall not be released until all outstanding fees and penalties have been paid. The Chief of Police is hereby authorized to have towed and impounded any vehicle that has been immobilized for at least seventy-two (72) hours to a designated impound lot. A vehicle immobilized under this Article shall not be released until a fifty-dollar administrative fee and all outstanding citations issued under this Article are paid in full. A vehicle impounded under this Subsection shall not be released by the impound lot unless the driver, owner or person in charge of such vehicle produces to an agent or representative of the impound lot a release issued by the Chief of Police. A release for an impounded vehicle shall be issued only after a seventy-five-dollar administrative fee and all outstanding citations issued under this Article are paid in full. (Ord. 96-19 §2)

Sec. 8-27. Tow-away zones.

(a) For purposes of this Section, abandoned vehicle shall mean any vehicle parked or left in any area that is clearly marked by a sign, as described in Paragraph 8-23(a)(2), warning vehicle operators that the area is a tow-away zone and that the vehicle may be towed and impounded at the owner's expense, where such vehicle is left or parked for a period of at least four (4) hours.

(b) The Chief of Police is authorized to remove and impound any abandoned vehicle as described under this Section. (Ord. 96-19 §3)

Secs. 8-28—8-40. Reserved.
ARTICLE III
Shuttle Traffic

Sec. 8-41. Findings of fact.

(a) The Board of Aldermen hereby finds, determines and declares that the operation of shuttle services within the City poses important issues concerning public safety, health and general welfare, thereby justifying the regulation of shuttle services. The regulations contained in this Section seek to protect and preserve public safety and health by furthering the more orderly flow of traffic within the City.

(b) The Board of Aldermen finds and determines that gaming and gaming establishments within the City have greatly increased the motor vehicle traffic within the City and that the City anticipates increased motor vehicle traffic in the future; that as motor vehicle traffic increases so does the deterioration of the City's streets; that increased vehicle traffic and deteriorated streets both greatly increase the likelihood of accidents between motor vehicles and between motor vehicles and pedestrians; that the City's parking and mass transportation system will significantly reduce motor vehicle traffic and its hazards to the public only if such system can effectively operate with a minimum of impediments; that unregulated shuttle service vehicles will constitute an impediment to the effective operation of the City's parking and mass transportation system; that the stopping, parking or operation of any vehicles within designated areas for loading and unloading passengers of the City's mass transportation system poses an impediment to the effective operation of that system and a hazard to passengers loading into, or disembarking from, the City's shuttle vehicles; that the operation of shuttle vehicles that use the same designated areas for loading and unloading passengers as the City's mass transportation system and which service areas outside of the City will confuse and inconvenience passengers who desire to remain in the City; and that the hazards, confusion and inconvenience to the traveling public within the City can only be reduced and the public health and safety be preserved by the regulation of shuttle services within the City.

(c) The Board of Aldermen determines that requiring shuttle owners or operators to establish designated shuttle stops within the City is necessary for the safety of the traveling public and the orderly movement of traffic within the City. In order to assure the orderly movement of traffic and the safety of the public shuttle owners or operators should not designate or use, as a shuttle stop, the traveled portion of any public right-of-way. Similarly, in order to protect property rights, assure the safety of the traveling public and assure the orderly movement of traffic, shuttle owners or operators should not designate or use, as a shuttle stop, any private property unless approved in writing by the property owner.

(d) The Board of Aldermen determines that a since the shuttle service seek to serve the general public, the City must insure that the shuttles are operated in a safe manner, with adequate insurance coverage. Therefore, the Board of Aldermen finds that shuttle owners or operators should provide proof of adequate insurance, as well as proof that the shuttle vehicle is inspected.

(e) The Board of Aldermen determines that, the shuttle operator shall not engage in activities that impair the safety of the public, impede the orderly flow of traffic or interfere with the safe operation of the shuttle vehicle.

(f) The Board of Aldermen determines that, in order to further the safety of the public, and to insure the orderly flow of traffic, shuttle drivers must give their undivided attention to driving the
shuttle. The City thus finds the soliciting customers, whether orally or by means of handbills, poses a safety hazard to both shuttle drivers and members of the public when such solicitation occurs while the shuttle vehicle is in operation. (Ord. 94-6 §1; Ord. 94-7 §1)

Sec. 8-42. Definitions.

The following words, terms or phrases, when used in this Article, have the following meanings:

Handbill means any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper booklet or coupon booklet.

Shuttle driver means the individual who drives the shuttle vehicle for the shuttle service.

Shuttle operator means the individual or entity operating the shuttle service.

Shuttle owner means the individual or entity owning the shuttle vehicle.

Shuttle service means an organized service, operated with or without compensation, to transport people within the City.

Solicit means and includes any uninitiated verbal, oral or spoken communication from the shuttle driver to another person with the purpose of inducing the person to utilize the shuttle service. (Ord. 92-6 §2; Ord. 92-8 §2; Ord. 94-7 §2)

Sec. 8-43. Registration required.

(a) All shuttle owners or operators shall register annually with the City. The shuttle owner or operator shall annually complete a shuttle registration form and shall annually submit a registration fee of one hundred dollars ($100.00). All shuttle owners or operators shall register as provided herein within seven (7) days of the effective date of the adopting ordinance codified herein. Thereafter, all shuttle owners or operators shall register annually on or before the date of the initial registration. All shuttle owners or operators who desire to operate a shuttle service after the effective date of the adopting ordinance codified herein shall register with the City prior to operating a shuttle service. All shuttle owners or operators shall keep a copy of the registration form in the shuttle vehicle at all times. In conjunction with the registration, shuttle owners or operators shall provide the City with the following documentation:

(1) A certificate of insurance indicating that the shuttle is insured in the following amounts, naming the City as an additional insured:

   a. Shuttle owners or operators using vehicles of seven (7) passenger or less capacity shall secure coverage in the amount of one million dollars ($1,000,000.00).

   b. Shuttle owners or operators using vehicles of between eight (8) and fifteen (15) passenger capacity shall secure coverage in the amount of one million five hundred thousand dollars ($1,500,000.00).

   c. Shuttle owners or operators using vehicles with sixteen (16) or more passenger capacity shall secure coverage in the amount of five million dollars ($5,000,000.00) unless a smaller amount is required to hold a PUC permit.

Such insurance shall be with a company acceptable to the City and shall provide that such insurance is not cancellable except upon twenty (20) days' prior written notice to the City of any cancellation or termination.
(2) Proof of periodic inspection by a qualified mechanic, indicating that the shuttle vehicle has passed an inspection relative to the brake system, exhaust system, fuel system, lighting devices, steering mechanism, suspension, frame, tires, wheels and rims, windshield glazing and windshield wipers. The mechanic performing the inspection shall adhere to the criteria set forth in the Department of Transportation regulations codified at Appendix G to Subchapter B – Minimum Periodic Inspection Standards, as required by 49 C.F.R. § 396.17.

(3) The proof of insurance and proof of inspection requirements shall not apply to any shuttle owner or operator who holds a valid Public Utilities Commission (“PUC”) permit. All shuttle owners or operators who hold a valid PUC permit shall submit a copy of the PUC permit to the City in conjunction with the registration form.

(b) Any shuttle service that designates Miner's Mesa Parking Lot as a shuttle stop as provided in Section 8-45 below shall submit a permit application to the City for the use of this shuttle stop. The shuttle service owner or operator shall designate the number of stops at the Miner's Mesa Parking Lot during the period of time covered in the permit, which shall only be issued on a monthly basis. The shuttle owner or operator shall not increase or decrease the number of designated stops at the Miner's Mesa Parking Lot until the monthly permit described herein is amended. The shuttle owner or operator shall pay the City a fee of two dollars ($2.00) for each person picked up at the Miner's Mesa Parking Lot and shall pay this fee to the City on a weekly basis each Friday by 3:00 p.m. All shuttle owners and operators shall keep a copy of the monthly permit form in the shuttle vehicle at all times. The monthly permit shall not be transferred or assigned. (Ord. 92-6 §3; Ord. 94-7 §3; Ord. 97-19 §1)

Sec. 8-44. Designation of shuttle stops.

(a) At the time of registration, all shuttle owners or operators that will provide a regular schedule of service shall submit to the City a list of designated shuttle stops for the shuttle service. No shuttle owner or operator shall designate or use, as a shuttle stop, the traveled portion of any public right-of-way. No shuttle owner or operator shall designate or use, as a shuttle stop, any public or private property, unless approved in writing by the property owner. This written approval shall be submitted to the City upon registration. Shuttle drivers shall strictly adhere to the designated shuttle stops and shall not pick up passengers or allow passengers to exit, except at the designated shuttle stops.

(b) Any shuttle service that is not prohibited under Subsection 8-47(a) below, has a current registration and monthly permit under Subsections 8-43(a) and (b) and is in compliance with the requirements of this Article, may designate Miner's Mesa Parking Lot as a shuttle stop. (Ord. 92-6 §4; Ord. 92-8 §3; Ord. 94-7 §4; Ord. 97-19 §2)

Sec. 8-45. Time schedules.

At the time of registration, all shuttle owners or operators shall submit to the City a schedule showing arrival and departure times to the designated shuttle stops. Shuttle drivers shall operate the shuttle vehicle in accordance with the schedule submitted. (Ord. 92-6 §5)

Sec. 8-46. Shuttle driver regulations.

(a) Shuttle drivers shall remain in the shuttle vehicle while stopped at a designated shuttle stop.

(b) Shuttle drivers shall not solicit passengers in any manner while stopped at a designated shuttle stop, or within the City limits.
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(c) Shuttle drivers shall not distribute handbills while the shuttle vehicle is in operation.

(d) Shuttle drivers shall not idle a shuttle vehicle, or permit the engine of a shuttle vehicle under their direction or control to idle, for a period in excess of five (5) minutes. It shall not be a violation under this Subsection (d) if a shuttle vehicle idles in excess of five (5) minutes due to traffic congestion which is caused through no fault of the shuttle operator. (Ord. 92-6 §§6, 7, 8; Ord. 94-7 §§5, 6, 7; Ord. 97-41 §1)

Sec. 8-47. Prohibitions.

(a) A driver of a shuttle service vehicle that provides service to destinations located outside of the City may drive such vehicle upon or use any street or roadway within the City until such time as the City Council determines that such shuttle service vehicle constitutes an impediment to the effective operation and flow of traffic on any street or roadway within the City. For the purposes of this Article, a shuttle service shall be defined in accordance with Section 8-42 above.

(b) No driver of any motor vehicle, including shuttle service vehicles, shall park at any location within the City which has been designated and posted as a location for the boarding or disembarking of passengers on shuttle vehicles owned by or operated on behalf of the City, or otherwise designated as a shuttle stop pursuant to this Article. For purposes of this Section, park means the standing of a vehicle other than for the purpose of and while actually engaged in boarding or disembarking passengers. No driver of any motor vehicle, with the exception of registered shuttle vehicles operating in accordance with their schedule submitted pursuant to Section 8-45 of this Article, shall stop at any location within the City which has been designated and posted as a location for the boarding or disembarking of passengers on shuttle vehicles.

(c) No driver of a shuttle service vehicle shall provide shuttle service to passengers to and from the Miner's Mesa Parking Lot unless the shuttle vehicle displays a current monthly permit as provided in Subsection 8-43(b) above and is in compliance with the requirements of this Article.

(d) No driver of a shuttle service vehicle that is owned or operated by or on behalf of Central City shall drive such vehicle on any street or roadway within the City, except pursuant to an intergovernmental agreement between the City and Central City. (Ord. 92-24 §2; Ord. 94-6 §2; Ord. 97-3 §1; Ord. 97-19 §3; Ord. 99-13 §1; Ord. 2000-9 §1)

Sec. 8-48. Enforcement.

(a) The driver of any vehicle who is convicted of, or pleads guilty or no contest to, a violation of this Article shall be punished by a fine not to exceed four hundred ninety-nine dollars ($499.00). Each and every violation shall be deemed and may be prosecuted as a separate offense.

(b) Any violation of this Article is hereby declared a public nuisance and may be corrected or abated by the City. Any owner of a shuttle service whose drivers create a public nuisance by two (2) or more violations of this Article may be subject to applicable law governing the abatement of nuisances, including the provisions requiring reimbursement to the City for its costs of abatement. The City may initiate an action in its own name in any court of competent jurisdiction concerning the abatement of any public nuisance created or caused by two (2) or more violations of this Article by a shuttle service. In any such action, the City may request any legal or equitable relief, including injunctive relief and civil damages, as provided by applicable law.
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(c) The remedies provided in this Section shall be cumulative. The enforcement of this Article against the owner of a shuttle service shall not preclude a separate enforcement against an individual driver of a shuttle service vehicle, and the enforcement of this Article against an individual driver of a shuttle service vehicle shall not preclude a simultaneous or subsequent enforcement against the owner of a shuttle service.

(d) The City Manager may revoke the monthly permit and prohibit the use of the Miner's Mesa Parking Lot by any owner or operator of a shuttle service that violates the requirements of this Article. The City Manager may also terminate the use of Miner's Mesa Parking Lot as a shuttle stop. (Ord. 92-24 §3; Ord. 94-1 §1; Ord. 94-7 §8; Ord. 97-19 §4)

Sec. 8-49. Exceptions.

(a) The provisions of Section 8-47 above shall not apply to the following:

(1) Any shuttle vehicle owned by or operated on behalf of the City or the Black Hawk Transportation Authority.

(2) Any bus or other vehicle operated for the purpose of transporting school children to or from an educational institution.

(b) In the event the City Council prohibits shuttle service as described in Section 8-47, the provisions of Subsections (a) and (b) of Section 8-47 shall not apply to the following:

(1) Any shuttle vehicle owned by, or operated on behalf of, the City of Central while such shuttle vehicle is using designated City street and roadways within the City pursuant to an intergovernmental agreement between the City and the City of Central.

(2) Any shuttle service vehicle operated solely to provide transportation of the employees of a business establishment.

(3) A shuttle vehicle that is owned and operated by a City business, excluding shuttle and transportation businesses, that only transports passengers who are patrons of the City business that owns and operates the shuttle, with exterior markings which identify the City business that owns and operates the shuttle.

(4) Any shuttle service vehicle which has a manufacturer's rated seating capacity of fewer than five (5) passenger seats, provided that such shuttle service vehicle has a valid Public Utilities Commission (PUC) permit.

(5) Any privately owned chartered shuttle service, which means a service offered by a private person or entity to transport a group of persons traveling from one (1) location to another for a common purpose, but does not provide a regular schedule of service from one (1) location to another.

(6) A shuttle service that has a valid PUC permit and a current registration issued by the City to stop at designated shuttle stops, excluding a shuttle service owned or operated by Central City. (Ord. 92-24 §5; Ord. 94-6 §4; Ord. 97-3 §2; Ord. 99-13 §2)

Sec. 8-50. Penalty.

Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. The penalties specified in this Section shall be cumulative and nothing shall be construed as either prohibiting or limiting the City from pursuing other remedies or penalties in an action at law or equity. (Ord. 94-1 §1)

Secs. 8-51—8-70. Reserved.
ARTICLE IV
Abandoned Motor Vehicles

Sec. 8-71. Definitions.

The following words and phrases, when used in this Article, shall have the meanings respectively ascribed to them:

Abandoned motor vehicle means:

a. Any motor vehicle left unattended on private property for a period of four (4) hours or longer without the consent of the owner or lessee of such private property or his or her legally authorized agent;

b. Any motor vehicle left unattended on public property, including any portion of a street or highway right-of-way within the City, for a period of twelve (12) hours or longer, unless a notice has been conspicuously affixed to the motor vehicle by its driver or owner indicating an intention to remove the motor vehicle and the time the notice was written, or unless such driver or owner shall have notified the Police Department of his or her intention to remove the vehicle within twelve (12) hours of such notification. If the driver or owner of the motor vehicle fails to remove said vehicle within twelve (12) hours of such notification, the motor vehicle shall be deemed to be an abandoned vehicle;

c. Any motor vehicle placed in an impound lot at the request of its owner, or the owner's agent, or an officer of the Police Department which is not lawfully removed from the impound lot in accordance with an agreement between the City and the owner or the owner's agent, or within seventy-two (72) hours of the time the Police Department notifies the owner or agent that the vehicle is available for release upon payment of any applicable charges or fees. If the Police Department requested the impoundment of the motor vehicle, the provisions of this Article governing the public tow of a motor vehicle shall apply as of the time the motor vehicle is deemed to have been abandoned. In all other situations, the provisions of this Article governing the private tow of a motor vehicle shall apply as of the time the motor vehicle is deemed to have been abandoned.

d. Any motor vehicle which is inoperative or legally inoperative for a period exceeding seven (7) days due to the vehicle's unsafe condition regarding the ability to endanger persons or property or due to broken or inoperable parts including but not limited to deflated tires, inoperable lights, brakes, broken windows or windshields, missing tires or other parts; or does not have lawfully affixed thereto an unexpired license plate or current vehicle registration; or which is wrecked, dismantled, partially dismantled or discarded; or any vehicle clearly not belonging to a resident or guest of a resident; or any vehicle determined to be lost, stolen or unclaimed.

Appraised value means a bona fide estimate of reasonable market value made by any motor vehicle dealer licensed in this State or by an employee of the Police Department whose appointment for such purpose has been reported by the Chief of Police to the Executive Director of the Department of Motor Vehicles of the State of Colorado.

Disabled motor vehicle means any motor vehicle which is stopped or parked, either attended or unattended, upon a public right-of-way and which is, due to any mechanical failure or any inoperability resulting from collision, fire, or damage, rendered temporarily inoperable.
Impound lot means a parcel of real property which is owned or leased by a government or operator at which motor vehicles are stored under appropriate protection.

Operator means a person or entity licensed by the Public Utilities Commission as a towing carrier.

Police Department means the City Police Department and the officers thereof.

Private property means any real property which is not public property.

Private tow means any tow of a motor vehicle not requested by the Police Department.

Public property means any real property having its title, ownership, use or possession held by the federal government, the State of Colorado, any county of this State, the City, any other municipality as defined by Section 31-1-101(6), C.R.S., or other governmental entity within this State.

Public tow means any tow of a motor vehicle requested by the Police Department.

Sec. 8-72. Public tow; when authorized.

(a) The Police Department is authorized to remove or have removed and to immobilize prior to removal any motor vehicle from public or private property under any of the following circumstances and to cause such motor vehicle to be impounded at an impound lot:

(1) When the Police Department has reasonable grounds to believe that the motor vehicle is an abandoned motor vehicle;

(2) When the motor vehicle, whether attended or unattended, is standing upon any portion of a street or highway right-of-way, fire lane, emergency lane or access so as to constitute an obstruction or hazard to traffic, road maintenance, public safety or emergency services, or a limitation or obstruction on the usual access to any public or private property;

(3) When the motor vehicle is parked or left standing upon any area or portion of a public street in violation of or contrary to a parking limitation or prohibition, provided that such area or portion of such public street has been posted with an official sign giving notice both of such limitation or prohibition and of the fact that such area or portion of such street is a tow-away zone;

(4) When the driver of the motor vehicle has been taken into custody by the Police Department or other law enforcement official and the vehicle is thereby left unattended upon any street, highway, public way or restricted parking area;

(5) When the driver of a motor vehicle is reasonably suspected of the unlawful use or misuse of license plates or a license permit, or the vehicle is being driven or is parked on public property without license plates or license permit, or the vehicle is being driven or parked on public property with an invalid or expired license plate or license permit;

(6) When the driver of a motor vehicle refuses to display a valid operator's license or chauffeur's license or does not have such operator's or chauffeur's license in his or her possession or is operating a motor vehicle at a time when his or her operator's or chauffeur's license has been denied, cancelled, suspended or revoked by the State;

(7) When the driver of a motor vehicle, or the vehicle which the driver is then driving, is reasonably suspected of involvement in a hit and run accident;
(8) When the motor vehicle is reasonably suspected of being a stolen vehicle or containing parts that are stolen;

(9) When the motor vehicle is reasonably suspected of being evidence of a felony or misdemeanor, or when the motor vehicle is necessary for the preservation of evidence of the commission of any crime;

(10) When the motor vehicle is included on a pickup/tow list authorized by the Municipal Court Judge and delivered to the Police Department, which list contains the following information:

   a. A description of the motor vehicle having been cited for at least one (1) or more parking violations, the fine for any one (1) of which shall not have been paid;

   b. License plate number of said vehicle;

   c. List of unpaid parking violations and dates of said violations;

   d. Total fine amount due, plus additional costs, for each unpaid parking violation.

(b) Whenever the Police Department impounds any motor vehicle pursuant to this Section, it shall follow the procedures for public tows of abandoned motor vehicles as set forth in Sections 8-73 and 8-74 below.

(c) Neither the Police Department, nor the officer ordering removal, nor anyone acting under the direction of either shall be liable for any damage to such motor vehicle occasioned by such removal. (Ord. 95-14 §1; Ord. 2002-08 §1)

Sec. 8-73. Procedure; report and notice.

(a) After causing an abandoned motor vehicle to be towed, the Police Department shall, if possible, ascertain by preliminary check whether the vehicle has been reported stolen, and if so reported, the Police Department shall attempt to notify the lawful owner. A motor vehicle reported stolen shall be subject to the provisions of Subsection (e) below.

(b) No later than three (3) business days after having caused an abandoned motor vehicle to be towed, the Police Department shall report such fact to the Department of Motor Vehicles by first class or certified mail or by personal delivery on a form provided by the Department of Motor Vehicles. The report shall contain the following information:

   1. The name and address of the Police Department;

   2. The name, business address, telephone number and signature of a representative of the Police Department;

   3. The fact of possession of the abandoned motor vehicle, the date possession was taken, the location of storage of the abandoned motor vehicle and the location from which it was towed;

   4. If applicable, the identity of the operator possessing the abandoned motor vehicle, together with the operator's business address, telephone number and carrier number assigned by the Public Utilities Commission;

   5. A description of the abandoned motor vehicle, including the make, model, color and year; the license plate number, issuing state and expiration date; the vehicle identification number; and a list of the names and addresses of any known drivers so as to enable the Department of Motor Vehicles to review its records and ascertain the last known owner of record of the motor vehicle and any lienholder.
(c) Upon receipt from the Department of Motor Vehicles of a report concerning the last-known owner of record of the abandoned motor vehicle, and the holder of any lien on such motor vehicle, the Police Department shall determine from all available information and after reasonable inquiry whether the abandoned motor vehicle has been reported stolen and, if so reported, shall notify the lawful owner thereof. The Police Department shall have the right to recover from the lawful owner its reasonable costs to recover and secure the motor vehicle. A motor vehicle reported stolen shall be subject to the provisions of Subsection (e) below.

(d) Unless the motor vehicle has been reported stolen, within five (5) business days after the receipt of the report from the Department of Motor Vehicles, the Police Department shall notify by certified mail the owner of record, if ascertained, and any lienholder, if ascertained, that a report regarding the abandoned motor vehicle has been received from the Department of Motor Vehicles and, if a claim for a lien has been made by an operator pursuant to Section 42-4-1607, C.R.S., that such claim has been made. A copy of the notice shall be sent to the operator claiming the lien on the motor vehicle. The notice shall also contain a statement that the motor vehicle has been reported as abandoned to the Department of Motor Vehicles and, if a claim for a lien has been made by an operator pursuant to Section 42-4-1607, C.R.S., that such claim has been made. A copy of the notice shall be sent to the operator claiming the lien on the motor vehicle. The notice shall also contain a statement that the motor vehicle has been reported as abandoned to the Department of Motor Vehicles, the location from which it was towed, the current location of the motor vehicle, the identity of the operator and an advisement that, unless the owner physically claims the motor vehicle within thirty (30) calendar days from the date of mailing of the notice, as determined by the postmark on the notice, the motor vehicle shall be deemed abandoned and subject to the procedures in this Article for sale of abandoned vehicles not reported stolen. The Police Department shall have the right to recover from the owner its reasonable costs in recovering, securing and storing the motor vehicle. (Ord. 95-14 §1)

Sec. 8-74. Hearing procedure.

(a) Upon receipt of a written request for hearing, the Police Department shall forthwith provide all information, including notifications, reports, records, postage receipts and returns concerning the motor vehicle to the Municipal Court Judge. The hearing shall be conducted within thirty (30) days, excluding weekends and holidays, of the receipt of the written demand unless the owner, or his or her attorney or agent, shall agree in writing to having the matter heard after the thirty-day period.

(b) The only issues at the hearing shall be whether or not: (1) the person demanding the hearing has a right to possession of the motor vehicle, and (2) there were legal grounds to impound the motor vehicle in question.

(c) The Municipal Court Judge shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence.
The person demanding the hearing may be represented by an attorney or an agent. The person making the demand for the hearing shall face the burden of establishing that such person has a right to possession of the motor vehicle. The Police Department shall have the burden of establishing that there existed legal grounds to impound the motor vehicle.

(d) At the conclusion of the hearing, the Municipal Court Judge shall enter his or her conclusions and order on the record. A document evidencing the Municipal Court Judge's order, and signed by the Municipal Court Judge, shall be provided to the person demanding the hearing and to the Police Department. The decision of the Municipal Court Judge shall not affect any criminal proceeding associated with the impounded vehicle. The decision of the Municipal Court Judge shall be final.

(e) The failure of a person having a legal right to demand possession of the motor vehicle to request a hearing in writing and in a timely manner, or the failure of the person demanding the hearing, or that person's attorney or agent, to attend a scheduled hearing, shall be deemed a waiver of such hearing.

(f) A determination by the Municipal Court Judge that the person demanding the hearing has no right to possession of the motor vehicle or that the demand was not timely shall terminate the hearing.

(g) A determination by the Municipal Court Judge that the Police Department lacked legal grounds to impound the vehicle shall cause the Municipal Court Judge to issue a certificate of release from impound, signed and dated by the Municipal Court Judge and identifying the subject motor vehicle by make, model, color, license plate number and vehicle identification number. Copies of the certificate shall be given to the person demanding the hearing and to the Police Department. Upon receipt of such a certificate, the operator shall release the motor vehicle to the person presenting such certificate. Subject to the provisions of Subsection (h) below, no storage fees or towing charges shall be charged to the person presenting such a certificate, and the subject vehicle shall be released from impound forthwith.

(h) If the person to whom a certificate was issued fails to present such certificate to the operator within twenty-four (24) hours of issuance, excluding such days as the operator is not open for business, the operator may thereafter claim from the person presenting the certificate those storage charges incurred subsequent to the twenty-four-hour grace period after the certificate was issued. The certificate shall contain an advisement of such requirement. (Ord. 95-14 §1)

Sec. 8-75. Private tow procedure.

(a) No person shall abandon any motor vehicle upon private property. The owner or lessee of private property upon which a motor vehicle has been abandoned, or his or her agent authorized in writing, may cause the abandoned motor vehicle to be removed from such private property by having it towed and impounded by an operator.

(b) Any operator having in his or her possession any motor vehicle from a private tow from property within the City shall immediately notify the Police Department as to the name of the operator; the location of the impound lot where the abandoned motor vehicle is located; a description of the abandoned motor vehicle, including the vehicle make, model, color and year; the license plate number, issuing state and expiration date; and the vehicle identification number. Upon receipt of such notification, the Police Department shall, if possible, ascertain whether the vehicle has been reported stolen and, if so reported, the Police Department shall notify the operator of that fact and shall attempt
to notify the lawful owner. A motor vehicle reported stolen shall be subject to the provisions of Subsection 8-73(e). In the event an abandoned motor vehicle has not been reported stolen, the Police Department shall immediately notify the operator of that fact.

(c) Within seventy-two (72) hours of notification from the Police Department that the motor vehicle has not been reported stolen, the operator shall report the abandoned motor vehicle, and the fact that the Police Department has determined that such motor vehicle has not been reported stolen, to the Department of Motor Vehicles by first class or certified mail or by personal delivery on a form provided by the Department of Motor Vehicles. The report shall contain the following information:

(1) The fact that the operator has possession of the motor vehicle, the date possession was taken, the location of storage of the abandoned motor vehicle, the location from which it was towed and the identity of the law enforcement agency determining that the vehicle was not reported stolen;

(2) The identity of the operator possessing the abandoned motor vehicle, his or her business address, telephone number and the carrier number assigned by the Public Utilities Commission;

(3) A description of the abandoned motor vehicle including the vehicle make, model, color and year; the license plate number, issuing state and expiration date; the vehicle identification number; and a list of the names and addresses of any known drivers, so as to enable the Department of Motor Vehicles to review its records, ascertain the last-known owner of record of the abandoned motor vehicle and any lienholder, and report such information to the operator.

(d) Within five (5) days of the receipt of a report from the Department of Motor Vehicles, the operator shall notify by certified mail or by personal delivery the owner of record and any lienholder that the operator has possession of the motor vehicle. The operator shall send a copy of the notice to the Police Department by certified mail or by personal delivery. The notice shall contain the following information:

(1) That the identified motor vehicle has been reported abandoned to the Department of Motor Vehicles;

(2) The operator's claim, if any, of a lien pursuant to Section 42-4-1607, C.R.S.;

(3) The location of the motor vehicle and the location from which it was towed; and

(4) That, unless claimed within thirty (30) calendar days from the date the notice was sent as determined from the postmark on the notice, the motor vehicle will be subjected to sale. (Ord. 95-14 §1)

Sec. 8-76. Appraisal and sale of abandoned vehicles.

(a) Public tow abandoned motor vehicles or motor vehicles abandoned in an impound lot subsequent to a public tow shall be appraised and sold by the Police Department at a public or private sale held not less than thirty (30) nor more than sixty (60) days after the date of mailing of the notice required in Subsection 8-73(d) or (e).

(b) Private tow abandoned motor vehicles or motor vehicles abandoned in an impound lot subsequent to a private tow shall be appraised and sold by the operator in a commercially reasonable manner at a public or private sale held not less than thirty (30) days nor more than sixty (60) days after the date of mailing of the notice required by Subsection 8-73(d) or (e).
(c) If the appraised value of an abandoned motor vehicle sold pursuant to this Section is two hundred dollars ($200.00) or less, the sale shall be made only for the purpose of junking, scrapping or dismantling such motor vehicle, and the purchaser at such sale shall not receive or be entitled to a Colorado certificate of title. A bill of sale shall be issued to the purchaser by the Police Department or the operator, along with a copy of the report submitted by the Police Department or the operator to the Department of Motor Vehicles. The bill of sale shall state that the purchaser acquires no right to a certificate of title. The Police Department or the operator shall submit a report of sale and a copy of the bill of sale to the Department of Motor Vehicles, and shall deliver a copy of the report of sale to the purchaser.

(d) If the appraised value of an abandoned motor vehicle sold pursuant to this Section is more than two hundred dollars ($200.00), the sale may be made for any use by the purchaser. The Police Department or the operator shall execute and deliver to the person purchasing the motor vehicle a bill of sale, a copy of the report submitted by the Police Department or the operator to the Department of Motor Vehicles and an application for a Colorado certificate of title signed by an officer of the Police Department or by a legally authorized representative of the operator. (Ord. 95-14 §1)

Sec. 8-77. Motor vehicle as evidence of crime.

No motor vehicle impounded by the Police Department shall be released from impound by the operator or the Police Department, nor shall any certificate of release from impound issue, when it appears that any law enforcement agency asserts that such motor vehicle is or may be evidence of a crime or contains or may contain evidence of a crime, or is necessary for an investigation of a crime by such law enforcement agency. The motor vehicle may be released from impound, subject to any applicable provisions of this Article, in the event such law enforcement agency indicates that further retention of the motor vehicle is no longer required. (Ord. 95-14 §1)

Sec. 8-78. Proceeds of sale.

(a) If the sale of any motor vehicle and its attached accessories or equipment under this Article produces an amount less than or equal to the sum of all charges of the operator who has perfected his or her lien, then the operator shall have a valid claim against the owner of record for the full amount of such charges less the amount received upon the sale of such motor vehicle. Such charges shall be assessed in the manner provided under Subsection (b) below.

(b) If the sale of any motor vehicle and its attached accessories or equipment produces an amount greater than the sum of all charges of the operator who has perfected his or her lien:

(1) The proceeds shall first satisfy the operator's charges as follows: the cost of towing the abandoned motor vehicle with a maximum charge of fifty dollars ($50.00) and the storage of the abandoned motor vehicle to be charged at the rate of four dollars ($4.00) per day for a maximum of sixty (60) days. In the case of an abandoned motor vehicle weighing in excess of ten thousand (10,000) pounds, the provisions of this Paragraph shall not apply and the operator's charges shall be determined by negotiated agreement between the operator and the Police Department, nor shall the provisions of this Paragraph apply where the Police Department and towing operator operate under a towing agreement.

(2) Any balance then remaining shall be paid to the Police Department to satisfy the costs of mailing notices, appraisal, advertising and selling the motor vehicle, and any other costs of the Police Department including administrative costs, taxes, fines and penalties due.
Sec. 8-79. Prohibited acts.

(a) It is unlawful for any person to leave or permit any abandoned vehicle to be stored on any street, public way, highway, alley or parking lot within the City.

(b) It is unlawful for any person who owns any property within the City or who is in charge or control of such property, or any tenant, lessee, occupant or renter of the same, to leave or permit any abandoned vehicle to remain or be stored on any property within the City for a period in excess of seven (7) days.

(c) Every person who is in violation of this Section is subject to the civil penalty contained in Section 1-74 of this Code. For each day, or portion thereof, during which the violation continues, a person may be cited for a separate civil infraction. The penalty specified in this Section shall be cumulative and nothing shall be construed as either prohibiting or limiting the City from preserving such other remedies or penalties in any action at law or equity. (Ord. 2002-08 §2)

Secs. 8-80—8-90. Reserved.

ARTICLE V

Recreational Vehicles and Related Equipment

Sec. 8-91. Definitions.

The following words and phrases, when used in this Article, shall have the meanings respectively ascribed to them:

Miner's Mesa permit. Recreational vehicles and recreational equipment may be stored at the Miner's Mesa facility owned by the City, subject to a permit issued by the Planning Director, according to the rules and regulations established by the Planning Director.

Recreational equipment means equipment used for recreational purposes, including but not limited to boats, snowmobiles, all-terrain vehicles, off-road motorcycles, dune buggies, jet skis and the trailers necessary to transport recreational equipment and livestock.

Recreational vehicle means a vehicle designed to be used as a temporary dwelling or sleeping accommodation for travel, recreation and vacation uses, including but not limited to travel trailers, self-contained travel trailers, pickup campers, tent trailers and motorized homes.

Recreational vehicle and equipment residential permit. Recreational vehicles and recreational equipment may be allowed in residential districts of the City for a duration not to exceed seventy-two (72) hours, subject to a permit issued by the Planning Director or his or her designee according to the rules and regulations established by the Planning Director. (Ord. 2002-10 §1, Ord. 2007-14 §1)

Sec. 8-92. Locating, storing and parking recreational vehicles.

(a) It is unlawful for any person to locate, store or park a recreational vehicle in any residential district of the City outside of a fully enclosed structure or a fence that fully screens the recreational vehicle from the public right-of-way and adjacent residential property, which structure or fence is permitted by the applicable residential zoning district, except as permitted in the Environmental Character Preservation District or as authorized by a valid recreational vehicle and equipment residential permit.
It is unlawful for any person who owns any real property located in a residential district of the City or who is in charge or control of such property, or any tenant, lessee, occupant or renter of the same, to locate, store or park a recreational vehicle on such property or within the right-of-way adjacent to such property, except as permitted in the Environmental Character Preservation District or as authorized by a valid recreational vehicle and equipment permit. (Ord. 2002-10 §1, Ord. 2007-14 §1)

Sec. 8-93. Miner’s Mesa storage.

The owner of a recreational vehicle or recreational equipment who resides in a residential district of the City may store the recreational vehicle or equipment at the Miner’s Mesa facility owned by the City, subject to a Miner’s Mesa permit. (Ord. 2002-10 §1, Ord. 2007-14 §1)

Sec. 8-94. Storage of recreational equipment.

It is unlawful for any person who owns any real property located in a residential district of the City or who is in charge or control of such property, or any tenant, lessee, occupant or renter of the same, to locate, store or park any recreational equipment on such property or in the right-of-way adjacent to such property in such a manner that the recreational equipment is visible from any public right-of-way in the City or any adjacent residential property, except as permitted in the Environmental Character Preservation District. Recreational equipment shall be located, stored or parked in a fully enclosed structure or fence, which structure or fence is permitted by the applicable residential zoning district. (Ord. 2002-10 §1, Ord. 2007-14 §1)

Sec. 8-95. Penalty.

Every person who is in violation of this Article is subject to the civil penalty contained in Section 1-74 of this Code. For each day, or portion thereof, during which the violation continues, a person may be cited for a separate civil infraction. The penalty specified in this Section shall be cumulative and nothing shall be construed as either prohibiting or limiting the City from preserving such other remedies or penalties in any action at law or equity. (Ord. 2002-10 §1, Ord. 2007-14 §1)

Secs. 8-96—8-110. Reserved.

ARTICLE VI

Restricted Streets for Bicycles

Sec. 8-111. Restricted streets.

Upon erection of appropriate signage, bicycles and other nonmotorized traffic found to be incompatible with the normal and safe movement of traffic shall be prohibited, in whole or in part, from operation on any street, highway or public way, the use of which the City has jurisdiction and authority to regulate. (Ord. 2009-20 §2)

Secs. 8-112—8-120. Reserved.

ARTICLE VII

Bicycle Event Permits

Sec. 8-121. Legislative findings.

The Board of Alderman hereby finds, determines and declares that the conducting of certain group bicycle events on streets and highways within the City poses important issues concerning public safety, health and general welfare, thereby justifying the regulation of group bicycle events. Persons riding bicycles collectively in a group or pack may obstruct, delay, or impede the normal flow of vehicular traffic, creating a significant impact to the motoring public and a significant risk of injury to bicyclists, motorists, or other persons. The unique canyon topography within the City makes these hazards of particular concern on roadways that are narrow, winding, and at a steep
grade. Heavy traffic associated with the City's tourist attractions and commercial enterprises further increases the potential for conflict between bicyclists and motor vehicles. Additionally, many motorists may be unfamiliar with and unaccustomed to the City's roadway conditions or sharing the roadway with groups of cyclists. The requirements contained in this Article seek to protect and preserve public safety and health by accommodating and promoting the shared use of streets and highways by bicyclists and motorists, and by enhancing and ensuring the orderly flow of all traffic within the City. (Ord. 2013-25 §1)

Sec. 8-122. Definitions.

The following words, when used in this Article, shall have the following meanings:

*Bicycle event* means any of the following activities conducted on a street or highway within the City, excluding State Highway 119:

(1) Any organized bicycle ride, event, or activity, whether competitive or recreational, including but not limited to a road race, touring ride, club ride, or charity ride, and regardless of the number of bicycles or participants.

(2) Any group of twenty (20) or more persons collectively engaged in a bicycle ride for any purpose.

*Permittee* means the person or the organization who receives a permit subject to the conditions of this Article. (Ord. 2013-25 §1)

Sec. 8-123. Permit required.

Any individual or entity desiring to hold a bicycle event within the City shall obtain a bicycle event permit from the City. (Ord. 2013-25 §1)

Sec. 8-124. Application.

Application for a bicycle event permit shall be made to the City Clerk upon forms provided by the City Clerk for that purpose at least fifteen (15) days prior to the proposed date of the bicycle event. In addition to the information requested on the form, the application shall include a description of the bicycle event including the anticipated number of participants and a site plan which shall show the location of the event and its proposed route. The City Clerk shall grant a bicycle event permit, provided that the application form is fully completed and is in compliance with this Article, unless the permittee is unable to comply with any conditions imposed pursuant to Section 8-125, and the ordinances of the City. (Ord. 2013-25 §1)

Sec. 8-125. Permit conditions.

(a) The City shall condition the issuance of a bicycle event permit by imposing reasonable requirements as are necessary to protect the safety of persons and property and the control of traffic. Nothing in this Subsection (a) shall be construed to require a permit to be granted in the event the City Clerk determines a bicycle event cannot be conducted in a safe manner consistent with the provisions of this Article VII of Chapter 8. Such conditions may include but are not limited to the following:

(1) Alteration of the date, time, duration, frequency, route or location of the event;

(2) Restrictions on the number of participants;

(3) Conditions concerning accommodation of vehicular traffic, including submission of a traffic control plan for affected roadways and payment of costs associated with providing peace officers for traffic control or security at the event;

(4) Requirements for provision of emergency access and first aid, including the provisions of dedicated emergency medical per-
sonnel depending on the size of the event, and which may specifically include the imposition of a condition by the City that the applicant provide at its cost such emergency medical personnel as the City deems necessary;

(5) Requirements for sanitary facilities, garbage containers, cleanup, and restoration of City property;

(6) Proof of liability insurance coverage in an amount to be determined by the City Clerk, but in no event less than the limitations set forth in the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as the same may be amended from time to time; and

(7) Any other requirements that may be needed or created by virtue of the proposed bicycle event.

(b) Failure to comply with permit conditions shall result in the revocation of the permit and termination of the event. (Ord. 2013-25 §1; Ord. 2014-12 §1)

Sec. 8-126. Fees and costs.

Each application for a bicycle event permit shall be accompanied by an application fee, which shall be set by City Council resolution. In addition, the permittee shall be responsible for the payments of costs associated with the event, including the cost of providing peace officers, emergency medical personnel, other necessary City personnel, sanitary facilities and other costs incurred by the City as a result of the event. (Ord. 2013-25 §1)

Sec. 8-127. Violations.

It is unlawful for any person to conduct a bicycle event without first obtaining a permit from the City as provided in this Article. Any failure to comply with any conditions stated in a permit or any of the requirements of this Article shall be a violation of this Article. (Ord. 2013-25 §1)

Sec. 8-128. Penalties.

Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. For each day, or portion thereof, during which any violation continues, a person may be cited for a separate civil infraction. (Ord. 2013-25 §1)
CHAPTER 10

General Offenses

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ARTICLE I

Offenses and Miscellaneous Provisions

Sec. 10-1. Definitions generally.

The terms used in this Chapter shall be defined in the Colorado Criminal Code, or if not defined in said code, as used in their ordinary, usual and accepted sense and meaning. In this Chapter, public place shall be taken to include any place commonly or usually open to the general public, or accessible to members of the general public. By way of illustration, public places include, but are not limited to, public ways, streets, buildings, sidewalks, alleys, parking lots, shopping centers, shopping center malls, places of business usually open to the general public, and automobiles or other vehicles in or upon any such place or places; but shall not include the interior or enclosed yard area of private homes, residences, condominiums or apartments. (Ord. 91-29 §1)

Sec. 10-2. Legislative intent.

It is the intent and purpose of this Chapter not to cover and include those offenses which are felonies under state statute, and this Chapter shall be so construed, notwithstanding any language contained in the Chapter which might otherwise be construed to the contrary. (Ord. 91-29 §1)

Sec. 10-3. Affirmative defenses.

The affirmative defenses available in Sections 18-1-701 to 18-1-710 and 18-2-101, C.R.S., shall be available as affirmative defenses to prosecutions in the Municipal Court under those provisions covered by this Chapter. (Ord. 91-29 §1)

Sec. 10-4. Penalty.

Failure to comply with the terms of this Chapter shall constitute a criminal violation. Any person who is found guilty of, or pleads nolo contendere to the violation of, a criminal violation shall be subject to the criminal penalties set forth in Section 1-73 of this Code. (Ord. 94-1 §1)

Sec. 10-5. Parental responsibility for acts of minor children.

(a) It is hereby made the duty of parents, guardians or persons having the charge, custody or control of minor children to actively prevent all minor children lawfully under their direction, control or custody from violating any section of this Chapter.

(b) Any parent, guardian or person issued a citation under Section 10-142 of this Chapter shall not be issued a citation under this Section for the same offense. (Ord. 91-29 §1)

Sec. 10-6. Attempts; aiding, abetting or advising.

(a) It shall be unlawful for any person to knowingly engage in conduct constituting a substantial step toward the commission of an offense which would constitute a violation of any section of this Chapter. A substantial step is any conduct, whether act, omission or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense.

(b) It shall be unlawful for any person to knowingly aid another in a commission of an offense which would constitute a violation of this Chapter. A person who engages in conduct intending to aid another to commit an offense commits criminal attempt if the person aids, abets or advises the other person in planning or committing the offense, even if the other person is not guilty of committing or attempting the offense. (Ord. 91-29 §1)
Sec. 10-7. Accessory to crime.

It shall be unlawful for any person to knowingly hinder, delay or prevent the discovery, detention, apprehension, prosecution, conviction or punishment of another for the commission of a violation of any section of this Chapter by:

1. Harboring or concealing the other;
2. Warning such person of impending discovery or apprehension; except that this does not apply to a warning given in an effort to bring such person into compliance with the law;
3. Providing such person with money, transportation, weapon, disguise or other thing to be used in avoiding discovery or apprehension;
4. Force, intimidation or deception, obstructing anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of such person; or
5. Concealing, destroying or altering any physical evidence that might aid in discovery, detection, apprehension, prosecution, conviction or punishment of such person.

Secs. 10-8—10-20. Reserved.

ARTICLE II

Offenses Against Property

Sec. 10-21. Trespass.

It is unlawful for any person without legal privilege to enter or to remain upon the premises of another or to fail or refuse to remove himself or herself from such premises when requested to leave by the owner, occupant or person having lawful control thereof. (Ord. 91-29 §1)

Sec. 10-22. Obstructing streets and sidewalks.

It is unlawful for any person to willfully, maliciously, negligently or recklessly place in any doorway or driveway not owned by him or her or under his or her lawful control or on any sidewalk, public highway, street or alley in the City, any object which causes or tends to cause the obstruction thereof or of any part thereof except as otherwise provided in Section 10-24 of this Code. (Ord. 91-29 §1; Ord. 98-52 §1)

Sec. 10-23. Parking on private premises.

It is unlawful for any person to park or stand a vehicle, whether or not such vehicle is occupied, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading the vehicle, in a private driveway or on private property without the express or implied consent of the owner or person in lawful control of such driveway or property. (Ord. 91-29 §1)

Sec. 10-24. Limitation on deliveries within the Gaming District.

It shall be unlawful for any operator to accept a delivery of consumable or nonconsumable goods at a place of business within the City where the delivery is made from any public right-of-way when the operator has the ability to accept the delivery of such goods off-street except between the hours of 3:00 a.m. and 9:00 a.m. It shall be unlawful for any vendor to deliver from any public right-of-way consumable or nonconsumable goods to a place of business located in the Gaming and Entertainment District of the City, except:

1. Between the hours of 3:00 a.m. and 9:00 a.m. if part or all of the delivery is for goods to be consumed on-site;
2. Between the hours of 3:00 a.m. and 11:00 a.m. if all of the delivery is for goods to be consumed off-site; or
(3) By permit issued by the Development Coordinator or authorized designee forty-eight (48) hours in advance of the delivery of any nonconsumable goods, or such lesser time as approved by the Development Coordinator. The Development Coordinator is authorized to approve, approve with conditions or deny the request for a delivery permit except between the hours of 3:00 a.m. and 9:00 a.m. when a permit is not required. (Ord. 94-19 §1; Ord. 98-31 §1; Ord. 98-51 §1)

Sec. 10-25. Construction-related deliveries.

It shall be unlawful for any vendor to deliver, or any owner or operator to accept, construction-related goods at a place of business between the hours of 1:00 p.m. Friday to 7:00 a.m. Monday or between the hours of 7:00 p.m. and 7:00 a.m. on any weekday. (Ord. 94-19 §2)

Sec. 10-26. Transportation of sewage.

It shall be unlawful for any person to transport through the City raw sewage, effluent, material from sewage or industrial waste treatment plants, or any liquid or vapor having a temperature that may cause an odor nuisance ("sewage") in an amount in excess of one hundred fifty (150) gallons except between the hours of 3:00 a.m. and 11:00 a.m. seven (7) days a week. However, if the transportation of the sewage must take place during the restricted period, the Chief of Police may authorize the transportation of the sewage if an emergency exists. (Ord. 94-23 §1)

Sec. 10-27. Limitation on trash hauling.

It shall be unlawful for any trash service collection to occur within the City between the hours of 12:00 a.m. and 7:00 a.m. seven (7) days a week. However, the Chief of Police may authorize trash service collection to occur between the hours of 12:00 a.m. and 7:00 a.m. in the event an emergency exists, or in the event the Chief of Police determines that no adverse impact on proximate residential properties will occur by reason of said trash service collection during the restricted hours. (Ord. 2004-12 §1)

Sec. 10-28. Prohibited use of skateboards, bicycles, in-line skates, roller skates, motor scooters, motor bicycles or other similar devices on public sidewalks.

(a) Definitions. The following words and phrases, whenever used in this Section, shall have the following meanings:

Bicycle means every vehicle propelled solely by human power applied to pedals upon which any person may ride, having two (2) tandem wheels or two (2) parallel wheels and one (1) forward wheel, all of which are more than fourteen (14) inches in diameter.

In-line skate means a roller skate with four (4) hard-rubber wheels in a straight line resembling the blade of an ice skate that is propelled solely by human power.

Motor scooter and motor bicycle mean every motor vehicle designed to travel on not more than three (3) wheels in contact with the ground, except any such vehicle as may be used to assist persons with physical disabilities, which motor vehicle is powered by an engine of not to exceed six horsepower.

Public sidewalk means that portion of a public street, whether publicly or privately owned, between the curb lines or the lateral lines of a roadway and the adjacent property lines intended for the use of pedestrians.

Roller skate means a form of skate with four (4) wheels or rollers that is propelled solely by human power.

Skateboard means a device for riding upon that is propelled solely by human power,
consisting of a short, oblong piece of wood, plastic or aluminum mounted on large roller wheels.

(b) It shall be unlawful for any person to use skateboards, in-line skates, roller skates, motor scooters, motor bicycles or other similar devices upon and along any public street or public sidewalk.

(c) It shall be unlawful for any person to operate a bicycle on any public sidewalk that is located within a nonresidential district as designated by Article V, Chapter 16 of this Code. (Ord. 2006-18 §1)

Sec. 10-29. Limitation on activities within the History Appreciation Recreation Destination (HARD) District.

(a) It is unlawful on any property within the HARD District for any person to:

(1) Discharge or cause to be discharged any firearm, as that term is defined in Section 10-163 of this Code;

(2) Build, maintain, attend or use an open fire or to conduct open burning, as those terms are defined in Section 10-135 of this Code;

(3) Permit any dog to run at large. A dog shall be deemed to be running at large when not under the control of the owner, possessor, or keeper of such dog either by leash, cord or chain not more than ten (10) feet in length that is being held and controlled by such person;

(4) Upon erection of appropriate signage, undertake or engage in camping or camping-related activities;

(5) Upon erection of appropriate signage, it is unlawful for any person to operate or cause to be operated a motorized vehicle in any area within the HARD District.

(b) Penalty for violation. Any person convicted of violating this Section shall, upon conviction, be punished by a fine of not more than four hundred ninety-nine dollars ($499.00) for each separate offense and may be enjoined from any further or continued violation. The City also may seek an injunction, abatement, restitution or any other remedy to prevent, enjoin, abate or remove the violation. Each day a violation of this Section continues shall constitute a separate offense. Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other criminal or civil remedies that may be available by Federal, State or local law. (Ord. 2017-3 §1)

Secs. 10-30—10-40. Reserved.

ARTICLE III

Damage or Destruction

Sec. 10-41. Public property generally.

(a) It shall be unlawful for any person to willfully, maliciously, wantonly or negligently destroy public real property or improvements thereto, or movable or personal public property or property which the law requires the City to maintain, or which by contract the City is required to maintain.

(b) It is unlawful for any unauthorized person to willfully remove, deface, injure, damage or destroy any street sign or traffic control or warning sign or device erected or placed in or adjacent to any street.

(c) It is unlawful for any vehicles equipped with treads or lug wheels which are injurious to pavement to be operated or caused to be operated by any person upon public streets; unless the operator of such vehicle first planks and protects such streets from damage. Nothing in this Section shall be construed to prohibit the use of studded snow tires.
Sec. 10-42. Private property generally.

(a) It is unlawful for any person to willfully, maliciously, wantonly or negligently injure, damage or destroy the real or personal property of another; provided that this Section shall not apply to any person showing a legal right or authority to injure, damage or destroy such property. It is further provided that this Section shall not apply where the damage is effected by means of fire or explosives or with the intent to defraud.

(b) This Section shall not apply when the aggregate value of the property damaged in any one (1) criminal episode is valued at one thousand dollars ($1,000.00) or more. (Ord. 91-29 §1; Ord. 94-1 §1; Ord. 98-44 §1; Ord. 2007-9 §1)

Sec. 10-43. Posters.

It is unlawful for any person willfully, maliciously, wantonly or negligently to tear down, deface or cover up any lawfully posted advertisement or bill of any person; provided that this Section shall not apply to any person having the lawful right to tear down, deface or cover up any such advertisement or bill. (Ord. 91-29 §1)

Secs. 10-44—10-60. Reserved.
ARTICLE IV

Theft and Related Offenses

Sec. 10-61. Theft generally.

(a) It is unlawful for any person knowingly to obtain or exercise possession of or control over anything of value of another without authorization, or by threat or deception; and if such person:

(1) Intends to deprive the other person permanently of the use or benefit of the thing of value;

(2) Knowingly uses, conceals or abandons the thing of value in such manner as to deprive the other person permanently of its use or benefit;

(3) Uses, conceals or abandons the thing of value intending that use, concealment or abandonment will deprive the other person permanently of its use and benefit; or

(4) Demands any consideration to which he or she is not legally entitled as a condition of restoring the thing of value to the other person.

(b) This Section shall not apply when the aggregate value of the item taken in any one (1) criminal episode is valued at two thousand dollars ($2,000.00) or more, nor where the item taken is a motor vehicle, trade secret or credit device. (Ord. 91-29 §1; Ord. 98-44 §1, Ord. 2007-9 §3; Ord. 2013-34 §4)

Sec. 10-62. Bad checks.

(a) It is unlawful for any person, knowing he or she has insufficient funds with the drawee, and with intent to defraud, to issue a check for a sum less than two thousand dollars ($2,000.00) for the payment of services, wages, salary, commission, labor, rent, money, property or other thing of value.

(b) As used in this Section:

Check means a written, unconditional order to pay a sum certain in money, drawn on a bank or other financial institution, payable on demand, and signed by the drawer, and also includes a negotiable order of withdrawal and a share draft.

Drawee means the bank upon which a check is drawn, or a bank, savings and loan association, industrial bank or credit union on which a negotiable order of withdrawal or a share draft is drawn.

Drawer means a person, either real or fictitious, whose name appears on a check as the primary obligor, whether the actual signature is that of himself or herself or of a person authorized to draw the check on himself or herself.

Insufficient funds means a drawer has insufficient funds with the drawee to pay a check when the drawer has no checking account, negotiable order of withdrawal account or share draft account with the drawee, or has funds in such an account with the drawee in an amount less than the amount of the check plus the amount of all other checks outstanding at the time of issuance; and a check dishonored for no account shall also be deemed to be dishonored for insufficient funds.

Issue means making, drawing, delivering or passing a check or causing it to be made, drawn, delivered or passed.

Negotiable order of withdrawal and share draft mean negotiable or transferable instruments drawn on a negotiable order of withdrawal account or a share draft account, as the case may be, for the purpose of making payment to third persons or otherwise.
Negotiable order of withdrawal account means an account in a bank, savings and loan association or industrial bank.

Share draft account means an account in a credit union on which payment of interest or dividends may be made on a deposit with respect to which the bank, savings and loan association, industrial bank or the credit union, as the case may be, may require the depositor to give notice of an intended withdrawal not less than thirty (30) days before the withdrawal is made, even though in practice such notice is not required and the depositor is allowed to make withdrawal by negotiable order of withdrawal or share draft.

(c) Any person having acquired rights with respect to a check which is not paid because the drawer has insufficient funds shall have standing to file a complaint under this Section, whether or not he or she is the payee, holder or bearer of the check.

(d) It is unlawful for any person to open a checking account, negotiable order of withdrawal account or share draft account using false identification or an assumed name for the purpose of issuing fraudulent checks.

(e) If deferred prosecution is ordered for a violation of this Section, the Court, as a condition of supervision, may require the defendant to make restitution on all checks issued by the defendant which are unpaid as of the date of commencement of the supervision, in addition to other terms and conditions appropriate for the treatment or rehabilitation of the defendant.

(f) A bank, a savings and loan association, an industrial bank or a credit union shall not be civilly or criminally liable for releasing information relating to the drawer's account to a police officer or authorized investigator for the Police Department investigating or prosecuting a charge under this Section.

(g) This Section does not relieve the prosecution from the necessity of establishing the required culpable mental state. However, for purposes of this Section, the issuer's knowledge of insufficient funds is presumed, except in the case of a postdated check or order, if:

1. He or she has no account upon which the check or order is drawn with the bank or other drawee at the time he or she issues the check or order; or

2. He or she has insufficient funds upon deposit with the bank or other drawee to pay the check or order, on presentation within thirty (30) days after issue. (Ord. 91-29 §1; Ord. 94-1 §1; Ord. 98-44 §1, Ord. 2007-9 §8; Ord. 2013-34 §5)

Sec. 10-63. Theft of rental property.

It is unlawful for any person knowingly to obtain or exercise control over the personal property of another, which is available only for hire, by means of threat or deception, or knowing that such use is without consent of the person providing the personal property or having obtained possession for temporary use of the personal property of another which is available only for hire, or by means of knowingly failing to reveal the whereabouts of or to return said property to the owner thereof or his or her representatives or to the person from whom he or she received it within seventy-two (72) hours after the time at which he or she agreed to return it. This Section shall not apply where the aggregate value of the items taken in any one criminal episode is valued at two thousand dollars ($2,000.00) or more. (Ord. 91-29 §1; Ord. 94-1 §1; Ord. 98-44 §1, Ord. 2007-9 §4; Ord. 2013-34 §6)

Sec. 10-64. Joyriding.

It is unlawful for any person knowingly to obtain or exercise control over the motor vehicle of another without authorization or by threat or deception for the purpose of temporarily
Sec. 10-65. Shoplifting.

It is unlawful for any person to knowingly obtain or exercise control over any goods, wares or merchandise having a total value of less than two thousand dollars ($2,000.00) held for sale by a store with the intention of depriving the store permanently of the use or benefit of such goods, wares or merchandise. (Ord. 91-29 §1; Ord. 98-44 §1, Ord. 2007-9 §5; Ord. 2013-34 §7)

Sec. 10-66. Concealment.

If any person willfully conceals unpurchased goods, wares or merchandise owned or held by and offered or displayed for sale by any store or other mercantile establishment, whether the concealment be on his or her person or otherwise and whether on or off the premises of said store or mercantile establishment, such concealment constitutes prima facie evidence that the person intended to commit the crime of theft. (Ord. 91-29 §1)

Sec. 10-67. Questioning of person suspected of theft without liability.

If any person conceals upon his or her person or otherwise carries away any unpurchased goods, wares or merchandise held or owned by any store or mercantile establishment, the merchant or any employee thereof or the police officers, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. Such questioning of a person by a merchant, merchant’s employee or the police officers does not render the merchant, merchant’s employee or the police officers civilly liable for slander, false arrest, false imprisonment, malicious prosecution or unlawful detention. (Ord. 91-29 §1)
ises under his or her control without having the door removed or the hinges and such portion of the latch mechanism removed so as to prevent latching or locking of the door.

(b) The provisions of this Section shall not apply to any vendor or seller of refrigerators, iceboxes, deep-freeze lockers, stoves, ovens, trunks or self-latching containers, who keeps or stores them for sale purposes in a showroom or saleroom ordinarily watched or attended by sales personnel during business hours and locked to prevent entry when not open for business; or if such vendor or seller takes reasonable precaution to effectively secure the door of any such refrigerator, icebox, deep-freeze locker, stove, oven, trunk or self-latching container so as to prevent entrance by children small enough to fit therein. (Ord. 91-29 §1)

Sec. 10-82. Storage of flammable liquids in vehicles.

It is unlawful to store or cause to be stored or parked, except for unloading, any vehicle used for the purpose of storing of flammable liquids, gases, explosives or toxicants, upon any streets, ways or avenues of the City or any other part of the City, except those areas zoned for such uses. (Ord. 91-29 §1)

Sec. 10-83. Storage of construction materials.

No person shall keep or store any construction materials unless such materials are covered or secured or in some manner protected so as to prevent such materials from being blown, scattered about or otherwise moved by wind, water or other natural causes. (Ord. 91-29 §1)

Sec. 10-84. Depositing snow or ice.

No person shall deposit or cause any snow or ice to be deposited on or against any fire hydrant or traffic signal control device or appurtenance; nor shall any person deposit or cause to be deposited accumulations of snow or ice upon or adjacent to any sidewalk, street or roadway or loading and unloading area of a public transportation system or any designated emergency access lane, such as may retard or in any way interfere with the safe and orderly flow of pedestrian or vehicular traffic by obstructing the view of such traffic on intersection streets or drives or by any other means, or in any way obstruct or impede street or roadway drainage. (Ord. 91-29 §1)

Sec. 10-85. Contamination of water.

It is unlawful for any person to throw or deposit or cause or permit to be thrown or deposited in any stream, storm or sanitary sewer, ditch, pond, well, cistern, trough or other body of water, whether artificially or naturally created, or so near thereto as to be liable to pollute the water thereof, any offal composed of animal or vegetable substance or both, any dead animal, sewage, excrement or garbage, trash or debris, any water, fuel, oil or other petroleum-based product, paint, chemical, whether liquid or solid, scrap construction material or any other materials that may cause the water to become contaminated. (Ord. 91-29 §1)

Sec. 10-86. Poisonous substances.

(a) It shall be unlawful for any person to put out, spread or distribute poison or any poisonous substance or material of any kind or nature whatsoever, for any purpose whatsoever, at any place or places within the City, except as hereinafter provided in Subsection (b) below.
(b) Upon application made in writing and signed by the applicant setting out the reason for such application and the purpose thereof, the Board of Aldermen may grant to any person who is the owner, lessee or tenant of real estate in the City a permit to put out, spread or distribute poison on such real estate of which he or she is the owner, tenant or lessee, for such purposes as may be necessary, including the poisoning of grasshoppers, prairie dogs and other destructive animals, insects, birds and pests, but such purposes shall not be deemed to include any domestic bird, fowl, beast, animal, swine or dog.

(c) Such permit shall state the name of the person to whom granted, the purpose of the same, the reason given for the necessity of the same, the description of the premises covered by the permit, the kind and nature of the poison to be spread and the manner of spreading and distributing the same, together with the period of the permit in which to do so. (Ord. 91-29 §1)

Sec. 10-87. Shooting, harassing, etc., animals.

(a) It is unlawful for any person willfully and unnecessarily to shoot, capture, harass, injure or destroy any wild bird or animal or attempt to shoot, capture, harass, injure or destroy any such wild bird or animal anywhere within the City.

(b) No person shall willfully destroy, rob or disturb the nest, nesting place, burrow, eggs or young of any wild bird or animal anywhere within this City.

(c) Wild bird includes all undomesticated birds native to North American and undomesticated game birds implanted in North America by governmental agencies and any domestic duck or goose released by any private person or recreational authority upon any recreational area within this City.

(d) Wild animal includes any animal native to the State, but does not include rattlesnakes, fish or any species of amphibians, Norway rats or common house mice.

(e) The provisions of this Section do not apply to the personnel of any police, fire or animal control agency or to the State Division of Wildlife or Department of Health or other state of federal agency, when such persons are acting within the scope of their official duties as employees of such agencies.

(f) The provisions of this Section are not intended to allow the destruction of any bird or animal protected by state or federal law. (Ord. 91-29 §1)

Secs. 10-88—10-100. Reserved.

ARTICLE VI

Offenses Relating to Morals

Sec. 10-101. Public indecency.

Any person who performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public commits public indecency:

(1) An act of sexual intercourse;

(2) An act of deviate sexual intercourse;

(3) A lewd exposure of the body done with intent to arouse or to satisfy the sexual desire of any person; or

(4) A lewd fondling or caressing of the body of another person. (Ord. 91-29 §1)
Sec. 10-102. Indecent exposure.

(a) A person commits indecent exposure if he or she knowingly exposes his or her genitals to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person.

(b) Indecent exposure is unlawful. (Ord. 91-29 §1)

Sec. 10-103. Sexual assault.

(a) It is unlawful for any person knowingly to subject another to any sexual contact where:

(1) The victim does not consent;
(2) The victim is incapable of appraising the nature of the victim's conduct;
(3) The victim is physically helpless and the victim has not consented;
(4) The person has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant or other means for the purpose of causing submission;
(5) At the time of the commission of the act, the victim is less than eighteen (18) years of age and the person is the victim's guardian or is otherwise responsible for the general supervision of the victim's welfare;
(6) The victim is in custody of law or detained in a hospital or other institution and the person has supervisory or disciplinary authority over the victim and uses this position of authority, unless incident to a lawful search, to coerce the victim to submit to any sexual contact; or
(7) The person engages in treatment or examination of a victim for other than a bona fide medical purpose or in a manner substantially inconsistent with responsible medical practices.

(b) This violation does not apply if the person compels the victim to submit by use of such force, intimidation or threat as specified in Section 18-3-402(1)(a), (1)(b) or (1)(c), C.R.S. (Ord. 91-29 §1; Ord. 94-1 §1)

Sec. 10-104. Prostitution prohibited.

(a) Any person who performs or offers or agrees to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation or anal intercourse with any person in exchange for money or other thing of value commits prostitution.

(b) In this Section:

Anal intercourse means contact between human beings of the genital organs of one and the anus of another.

Cunnilingus means any act of oral stimulation of the vulva or clitoris.

Fellatio means any act of oral stimulation of the penis.

Masturbation means stimulation of the genital organs by manual or other bodily contact exclusive of sexual intercourse.

(c) Prostitution is unlawful. (Ord. 91-29 §1)

Sec. 10-105. Soliciting for prostitution.

(a) A person commits soliciting for prostitution if he or she:

(1) Solicits another for the purpose of prostitution;
(2) Arranges or offers to arrange a meeting of persons for the purpose of prostitution; or

(3) Directs another to a place knowing such direction is for the purpose of prostitution.

(b) Soliciting for prostitution is unlawful. (Ord. 91-29 §1)

Sec. 10-106. Keeping a place of prostitution.

(a) Any person who has or exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution and who performs any one (1) or more of the following commits keeping a place of prostitution if he or she:

(1) Knowingly grants or permits the use of such place for the purpose of prostitution; or

(2) Permits the continued use of such place for the purpose of prostitution after becoming aware of facts or circumstances from which he or she should reasonably know that the place is being used for purposes of prostitution.

(b) Keeping a place of prostitution is unlawful. (Ord. 91-29 §1)

Sec. 10-107. Patronizing a prostitute.

(a) Any person who performs any of the following with a person commits patronizing a prostitute:

(1) Engages in an act of sexual intercourse or of deviate sexual conduct with a prostitute; or

(2) Enters or remains in a place of prostitution with intent to engage in an act of sexual intercourse or deviate sexual conduct.

(b) Patronizing a prostitute is unlawful. (Ord. 91-29 §1; Ord. 94-1 §1)

Sec. 10-108. Promoting sexual immorality.

(a) Any person who, for pecuniary gain, furnishes or makes available to another person any facility, knowing that the same is to be used for or in aid of sexual intercourse between persons who are not husband and wife, or for or in aid of deviate sexual intercourse, or who advertises in any manner that he or she furnishes or is willing to furnish or make available any such facility for such purposes, commits promoting sexual immorality.

(b) Facility, as used in this Section, means any place or thing which provides seclusion, privacy, opportunity, protection, comfort or assistance to or for a person or persons engaging or intending to engage in sexual intercourse or deviate sexual intercourse.

(c) Promoting sexual immorality is unlawful. (Ord. 91-29 §1)

Secs. 10-109—10-120. Reserved.

ARTICLE VII

Offenses Against Public Peace

Sec. 10-121. Disturbing the peace.

Any person who disturbs the peace of others by violent, tumultuous or offensive conduct (likely to cause an immediate breach of the peace), by loud or unusual noise, by unseemly, profane, obscene or offensive language (and the language by its very utterance tends to incite an immediate breach of the peace) or by assaulting, striking, fighting or challenging another to fight, shall be deemed guilty of a misdemeanor. (Ord. 91-29 §1; Ord. 95-15 §1)
Sec. 10-122. Disrupting lawful assembly.

It is unlawful for any person to disrupt a lawful assembly if, with the intent to prevent or disrupt any lawful meeting, procession or gathering, he or she significantly obstructs or interferes with the meeting, procession or gathering by physical action, verbal utterances or by any other means. (Ord. 91-29 §1)

Sec. 10-123. Loitering.

(a) In this Section, to loiter means to be dilatory, to stand idly, to linger, to lie or wander about, or to remain, abide or tarry in a public place.

(b) It is unlawful for any person to loiter in a school building or on the grounds or within one hundred (100) feet of school grounds when persons under the age of eighteen (18) are present in the building or on the grounds, not having reason or relationship involving custody of or responsibility for a pupil or other specific, legitimate reason for being there and not having written permission from a school administrator.

(c) Lawful acts in the course of lawful assembly as a part of peaceful and orderly petition for the redress of grievances, either in the course of labor disputes, or otherwise, shall not be held to be in violation of this Section. (Ord. 91-29 §1)

Sec. 10-124. Unlawful assembly.

It shall be unlawful for any two (2) or more persons to assemble together with an intent to do an unlawful act; or, being assembled, mutually to agree to act in concert, or to do an unlawful act with force or violence against the property of the City, or the person or property of another or against the peace and to the terror of others; or to make any move or preparation therefor. (Ord. 91-29 §1)

Sec. 10-125. Unlawful interference; educational institutions.

(a) It is unlawful for any person on or near the premises or facilities of any educational institution to willfully deny to students, school officials, employees and invitees:

1. Lawful freedom of movement on the premises;
2. Lawful use of the property or facilities of such institution; or
3. The right of lawful ingress and egress to the institution's physical facilities.

(b) It is unlawful for any person on the premises of any educational institution or at or in any building or other facility being used by any educational institution to willfully impede the staff or faculty of such institution in the lawful performance of their duties or to willfully impede a student of such institution in the lawful pursuit of his or her education activities through the use of restraint, coercion or intimidation or when force and violence are present or threatened.

(c) It is unlawful for any person to willfully refuse or fail to leave the property of, or any building or other facility used by, any educational institution upon being requested to do so by the Chief Administrative Officer charged with maintaining order on the school premises and in its facilities or a dean of such educational institution, if such person is committing, threatens to commit or incites others to commit any act which would disrupt, impair, interfere with or obstruct the lawful missions, processes, procedures or functions of the institution.

(d) Nothing in this Section shall be construed to prevent lawful assembly and peaceful
and orderly petition for the redress of grievances, including any labor dispute between an educational institution and its employees, or any contractor or subcontractor of any employee thereof. (Ord. 91-29 §1)

Sec. 10-126. Unlawful interference; public buildings and proceedings.

It is unlawful for any person to so conduct himself or herself at or in any public building owned, operated or controlled by the City, the State or any of its political subdivisions, as to willfully deny to any public official, public employee or any invitee on such premises, the lawful rights of such official, employee or invitee to enter, use the facilities of or leave any such public building. (Ord. 91-29 §1)

Sec. 10-127. Harassment.

(a) A person commits harassment if, with intent to harass, annoy or alarm another person, he or she:

(1) Strikes, shoves, kicks or otherwise touches a person or subjects him or her to physical contact;

(2) In a public place, directs obscene language or makes an obscene gesture to or at another person;

(3) Follows a person in or about a public place or places;

(4) Initiates communication with a person, anonymously or otherwise, by telephone, computer, computer network or computer system, in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion or proposal by telephone, computer, computer network or computer system which is obscene;

(5) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation;

(6) Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another’s home or private residence or other private property; or

(7) Repeatedly insults, taunts, challenges or makes communications in offensively coarse language to another in a manner likely to provoke a violent or disorderly response.

(b) As used in this Section, unless the context otherwise requires, obscene means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus or excretory functions.

(c) Any act prohibited by Subparagraph (a)(4) above may be deemed to have occurred or to have been committed at the place at which the telephone call, electronic mail or other electronic communication was either made or received.

(d) In addition to the circumstances described in Subsection (a) above, a person commits harassment by stalking if such person:

(1) Makes a credible threat to another person and, in connection with such threat, repeatedly follows, approaches, contacts or places under surveillance that person, a member of that person’s immediate family or someone with whom that person has or has had a continuing relationship;

(2) Makes a credible threat to another person and, in connection with such threat,
repeatedly makes any form of communication with that person, a member of that person's immediate family or someone with whom that person has or has had a continuing relationship, regardless of whether a conversation ensues; or

(3) Repeatedly follows, approaches, contacts, places under surveillance or makes any form of communication with another person, a member of that person's immediate family or someone with whom that person has or has had a continuing relationship in a manner that would cause a reasonable person to suffer serious emotional distress and does cause that person, a member of that person's immediate family or someone with whom that person has or has had a continuing relationship to suffer serious emotional distress. For purposes of this Paragraph, a victim need not show that he or she received professional treatment or counseling to show that he or she suffered serious emotional distress.

(e) For the purposes of Subsection (d) above:

*Conduct in connection with a credible threat* means acts which further advance, promote or have a continuity of purpose, and may occur before, during or after the credible threat.

*Credible threat* means a threat, physical action or repeated conduct that would cause a reasonable person to be in fear for the person's safety or the safety of his or her member of that person's immediate family or someone with whom that person has or has had a continuing relationship. Such threat need not be directly expressed if the totality of the conduct would cause a reasonable person such fear.

*Immediate family* includes the person's spouse, parent, grandparent, sibling or child.

Repeated or repeatedly means on more than one (1) occasion. (Ord. 91-29 §1; Ord. 94-1 §1; Ord. 2003-4  §1)

**Sec. 10-128. Urination and defecation in public.**

(a) It is unlawful for any person to urinate or defecate in a public place, or at any other location where such conduct is observed by another person who has a legal right to be present at the location for which the conduct was observed.

(b) Nothing in this Section shall be construed to prohibit the normal use of public facilities specifically designed and intended for the use of voiding human bodily wastes. (Ord. 91-29 §1)

**Sec. 10-129. Fighting by agreement.**

(a) It is unlawful for two (2) or more persons to fight by agreement in a public place except in a sporting event authorized by law.

(b) This Section shall not apply to persons who by agreement engage in a fight with deadly weapons, whether public or private. (Ord. 91-29 §1)

**Sec. 10-130. Unreasonable and/or excessive noise.**

(a) It shall be unlawful for any business, residence or person to make, continue or cause to be made or continued any unreasonable and/or excessive noise, and no business, residence or person shall knowingly permit such noise upon any premises owned or possessed by such business, residence or person or under the control of such business, residence or person.

(b) The use or operation for any commercial purpose of any loudspeaker, public address system or similar device at any time shall be considered unreasonable and/or excessive noise in
the event the noise from the loudspeaker, public address system or similar device crosses an adjacent property line in a manner so as to be deemed unreasonable and/or excessive to a reasonable person.

(c) The use or operation for any noncommercial purpose of any loudspeaker, public address system or similar device between the hours of 10:00 p.m. and 8:00 a.m. the following day shall be considered unreasonable and/or excessive noise.

(d) For purposes of this Section, a determination as to whether noise is unreasonable and/or excessive shall be based upon whether a reasonable person, taking into account all the attendant circumstances, including but not limited to the time of day, weather conditions, location and traffic in the area, would consider the noise to be unreasonable and/or excessive.

(e) Stationary noise producers prohibited.

(1) Definitions. For purposes of this Subsection, the following words shall have the following meanings:

Emergency means any event, occurrence or situation requiring or causing the delivery of essential services, including but not limited to the repair of water, gas, electric, telephone, sewer facilities or public transportation facilities, the removal of fallen trees on public rights-of-way or the abatement of life-threatening conditions.

Muffler means a sound-dissipative device or system for attenuating the sound of escaping gases of an internal combustion engine.

Person means any individual, corporation, company, association, society, firm, partnership, joint stock company, the City or any political subdivision, agency or instrumentality of the City.

Public right-of-way means any street, avenue, boulevard, road, highway, sidewalk, alley or similar place which is leased, owned or controlled by a governmental entity.

Real property line means either: (a) the line, including its vertical extension, that separates one (1) parcel of real property from another; or (b) the vertical and horizontal boundaries of a dwelling unit that is contained within a multi-use building.

Stationary noise producer means any entity or structure in a fixed location that emits noise and may include, without limitation, motors, appliances, air conditioners, generators, lawn and garden equipment and power tools.

(2) Maximum permissible noise levels from stationary noise producers.

a. It shall be unlawful for any person to generate, cause to be generated or permit to be generated, by a stationary noise producer, any excessive or unusually loud noise or any noise, including but not limited to noise that is shrill, impulsive or continuous or that creates vibrations or is emitted at levels which unreasonably annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of others within the City, except when made in compliance with a permit issued pursuant to this Article.

b. It shall be unlawful for any person to generate, cause to be generated or permit to be generated, by a stationary noise producer, any sound levels that cross an adjacent property line in a manner so as to be deemed unreasonable and/or excessive to a reasonable person.
(3) Application of prohibition regarding stationary noise producers.

a. Construction work of any type conducted pursuant to an official building permit, approved development plan or demolition work shall be subject to the applicable provisions of this Code, and permitted construction work shall not otherwise be subject to the limitations in this Subsection; provided, however, that under no circumstances shall the use of generators for electricity-saving or peak-saving purposes be considered construction work.

b. Stationary noise producers that consist of motorized equipment, machinery or engines powered by electricity, gasoline or other fuel products, including, without limitation, air conditioners, appliances and generators, shall be operated at all times such that the noise therefrom does not cross an adjacent property line in a manner so as to be deemed unreasonable and/or excessive to a reasonable person.

(4) Exemptions.

a. General exemptions. The following uses and activities shall be exempt from the sound level regulations contained within this Article:

1. Sound made by safety signals, warning devices and sound resulting from any authorized emergency vehicle or equipment when responding to an emergency call or acting in time of emergency.

2. Sound emanating from activities permitted through the issuance of a special use permit, including parades and fireworks displays.

3. Sound emanating from City-sanctioned activities, including those at City parks and recreational facilities, or private activities at the facilities as authorized through a valid permit.

4. Noise generated by tools or equipment during emergency operations or activities that are reasonably necessary for the public health, safety or welfare.

b. Permits. Upon application, a permit relieving compliance with the noise levels designated in this Section may be issued upon the finding of the City Manager or his or her designee that:

1. No other reasonable alternative is available to the applicant; and

2. Additional time is necessary for the permit applicant to alter or modify his or her activity or operation to comply with this Section; or

3. The permit is necessary for the community's cultural, historical or social benefit; or

4. The activity, operation or noise source will be of temporary duration and cannot be done in a manner that would comply with this Section.

Any permit granted by the City Manager under this Section shall contain all conditions upon which the permit has been granted and shall specify a reasonable time that the permit shall be effective.

(5) Enforcement.

a. Violations. Each day that any violation occurs shall constitute a separate
violation, for which the maximum fine per day shall be the amount of four hundred ninety-nine dollars ($499.00).

b. Court-ordered abatement. Any violation of this Article is deemed and declared to be a nuisance and, as such, may be subject to abatement by the City pursuant to Article I of Chapter 7 of this Code. (Ord. 95-16 §1; Ord. 2002-18 §1; Ord. 2008-15 §1; Ord. 2010-5 §1)

Sec. 10-131. Disturbing the peace - motor vehicles.

(a) It shall be unlawful for any person to operate or permit the operation of any motor vehicle that emits any unreasonably loud, raucous or unusual noise that disturbs or tends to disturb the quiet, peace, rest, enjoyment and comfort of persons within any area of the City.

(b) Use of engine compression brakes within City limits prohibited.

(1) It shall be unlawful for any commercial motor vehicle to use or engage engine compression brakes while operating upon any City street.

(2) As used in this Section, the term "engine compression brakes" means an engine retarder or dynamic braking device primarily on large trucks for the conversion of the engine from an internal combustion engine to an air compressor for the purpose of braking without, or supplemental to, the use of wheel brakes. Such braking systems are commonly referred to as "Jacobs Brakes," "Jake Brakes," "Dynatard Brakes" or "Compression Brakes."

(3) Signs with the following or substantially similar wording shall be posted at reasonable locations within the boundaries of the City: "USE OF ENGINE COMPRES-

SION BRAKES WITHIN CITY LIMITS PROHIBITED. Black Hawk Municipal Code § 10-131."

(c) Evidence that a person operated or permitted the operation of any motor vehicle that was not equipped with a properly maintained exhaust muffler in constant operation shall be prima facie evidence of a violation of this Section.

(d) Any person convicted of a violation of this Section shall be punished by a fine of not more than four hundred ninety-nine dollars ($499.00). Each violation shall constitute a separate offense. (Ord. 98-21 §2; Ord. 2006-27 §1)

Sec. 10-132. Limitations on hawking.

(a) Definitions.

Hawking means the act of soliciting customers or distributing or displaying literature, coupons, signs, posters, tokens or coins or using a loudspeaker or voice amplification device or music for the primary purpose of soliciting or attracting customers to a business. Disseminating information which is not primarily for the purpose of proposing a commercial transaction is not considered hawking. Waving at customers shall not be considered hawking.

Hawking zone means that area around the primary entry of a casino or other business limited to the width of the primary entry, or a width of five (5) feet, whichever is greater, and extending no more than three (3) feet into the established sidewalk right-of-way. In the event the primary entry is recessed from the face of the exterior wall of the casino or other business, the five-foot hawking zone width shall be established from the points of the intersection of the face of the exterior wall and the walls of the recessed portion of the primary entry.
(b) It shall be unlawful for any person to hawk or commit the act of hawking in or on the public right-of-way or designated shuttle stop. No person shall obstruct or use physical obstructions such as, without limitation, chairs, tables or devices intended to attract attention, in any public right-of-way, including the area within the hawking zone. Any structure, bench or fixture required to be permitted by the building code shall not constitute an obstruction as contemplated by this Subsection (b). A person may hawk or commit the act of hawking within a hawking zone or within the confines of a private shuttle or other vehicle used for passenger transport.

(c) Any person who demonstrates an inability to use a designated hawking zone may apply to the Chief of Police for a license to hawk upon public rights-of-way outside or away from a designated hawking zone. The Chief of Police shall issue a hawking license conditioned upon the applicant's written agreement to comply with the terms of the license. The Chief of Police shall promulgate any rules, regulations or guidelines to administer the licensing provision of this Subsection (c). Any license issued under this Subsection (c) is nonrenewable and shall be valid for a period not to exceed one (1) year from the date of issue.

(d) Any person wishing to appeal any condition imposed by a license issued pursuant to this Section shall file a written appeal with the Board of Appeals within ten (10) days from the date of the final action by the Chief of Police.

(e) Any person who hawks outside of a hawking zone without first obtaining a license shall be subject to the penalties set forth under Section 1-74 of the Code. (Ord. 99-7 §3; Ord. 2002-19 §1)

Sec. 10-134. Residential picketing.

(a) Definitions. For purposes of this Section, the following terms shall have the following meanings:

Directed, focused or targeted at means that a particular private residence or any of its occupants has been made the sole object of picketing and that the picketing takes place either directly in front of the targeted private residence, directly in front of an adjacent private residence or on either side of the targeted residence.

Picket means to station or post one (1) or more persons, with or without a sign, before or about a targeted residence.

Private residence means a single-family dwelling unit or multi-family dwelling unit.

Residential zone district means a section of the city which has been zoned as a Historic Residential (HR), Rural Residential (RR) or Environmental Character Preservation (ECP) zone district.

(b) Picketing of private residence prohibited. It shall be unlawful for any person to engage in picketing which is directed, focused or targeted solely at a particular private residence located in a residential zone district and which either takes place directly in front of the targeted private residence, directly in front of an adjacent private residence or on either side of the targeted residence.

(c) Nothing in this Section shall prohibit:

(1) The picketing of a targeted residence that is used as the occupant’s sole place of business;

(2) The picketing of a targeted residence that is used as a place of public meeting;

Editor's note: Ord. No. 2015-37, § 1, adopted Nov. 11, 2015, repealed § 10-133, which pertained to panhandling and derived from Ord. 2006-12 § 1.
(3) A person or group from going door to door to proselytize their views, provided that such person or group has been issued a solicitation permit pursuant to Article XIII of Chapter 6 of this Code.

(4) A person or group of persons from marching with or without signs in a residential zone area on a defined route without stopping at any particular private residence or residences.

(d) Time restrictions. Picketing or marching in residential zone districts is permitted only between the hours of 8:00 a.m. and 8:00 p.m.

(e) Required warning. Before a person may be charged with violating this Section, the person shall have been ordered at that time or at sometime prior thereto, to move or disperse by a police officer. In order to assure that appropriate warning has been given, the Police Department shall maintain a log indicating the specific address(es) of the targeted residence and adjacent residence(s), the date of the warning and the name of the warned individual.

(f) Affirmative defense. It is an affirmative defense to prosecution under this Section that a person:

(1) Was not given a warning as provided in this Section; or

(2) Promptly obeyed a warning as provided in this Section. (Ord. 2007-4 §2)

Sec. 10-135. Open fire and open burning restrictions.

(a) Definitions. For purposes of this Section, the following terms shall have the following meanings:

*Open fire or open burning* shall be defined as any outdoor fire, including but not limited to campfires, warming fires, charcoal grill fires, fires in wood-burning stoves, the use of explosives, outdoor welding or hot work, fireworks of all kinds or brands and the prescribed burning of fence lines or rows, fields, farm lands, rangelands, wildlands, trash and debris. 

(b) Authorization to impose temporary restrictions. The Board of Aldermen hereby authorizes the City Manager to adopt by administrative order a temporary restriction on open fires and/or open burning within the corporate limits of the City, based on a finding of necessity that the danger caused by open fires and open burning based on then-current atmospheric conditions, including a lack of moisture and other local conditions, requires the imposition of such a restriction.

(c) Duration of restrictions. The City Manager is authorized to impose restrictions of a limited duration based on the nature and scope of the current conditions. Any such duration may be extended or modified by subsequent administrative order of the City Manager based on continuing adverse fire conditions.

(d) Unlawful acts. It shall be unlawful for any person to build, maintain, attend or use an open fire or conduct open burning in the City, including public, private, State and Federal lands, in violation of this Code or in violation of an administrative order issued by the City Manager in accordance with this Section.
(e) Penalty for violation. Any person convicted of violating any provision of this Section shall, upon conviction, be punished by a fine of not more than four hundred ninety-nine dollars ($499.00) for each separate offense and may be enjoined from any further or continued violation. The City also may seek an injunction, abatement, restitution or any other remedy to prevent, enjoin, abate or remove the violation. Each day a violation of this Section continues shall constitute a separate offense. Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

(f) Additional remedies. The remedies provided in this Section shall be cumulative and in addition to any other federal, state or local remedy, criminal or civil, which may be available. Nothing contained herein shall be construed to preclude prosecution under any other applicable statute, including but not limited to prosecution under Section 18-13-109, C.R.S., or any other applicable statute, ordinance, rule, order or regulation. (Ord. 2012-18 §1; Ord. 2017-3 §2)

Sec. 10-136. Sitting or lying down in designated areas.

(a) Legislative Findings. The City Council finds and determines that intentionally blocking, obstructing or interfering with the safe or free passage of a pedestrian or vehicle by any means in high traffic areas, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid contact is a public safety concern without regard to the speech of the individual who is intentionally blocking, obstructing or interfering with the safe or free passage of a pedestrian or vehicle, and that such conduct should be regulated to address the public safety concerns caused by individuals taking evasive action to avoid such contact.

(b) Unlawful. In all non-residential districts, as the same are designated by the City of Black Hawk Zoning Map, it shall be unlawful for any person to sit, kneel, recline or lie down upon the surface of any public right-of-way, or upon any bedding, chair, stool, or any other object placed upon the surface of the public right-of-way, between the hours of 7:00 a.m. and 3:00 a.m.

(c) Definitions. For the purposes of this Section, the term below shall have the following meaning:

"Public right-of-way" means any street, sidewalk, trail, path alley, parkway, curb, median, jersey wall, traffic island or any other publicly owned property intended or used for pedestrian, recreational or vehicular travel.

(d) Defense. It is an affirmative defense to a violation of this Section that a person:

(1) Sits, kneels, reclines or lies down upon the public right-of-way due to a medical emergency.

(2) As a result of a medically confirmable disability, utilizes a wheelchair, walker or other similar mobility supporting device to move about the public right-of-way.

(3) Is operating or patronizing a commercial establishment located in the public right-of-way pursuant to any permit or license issued by the City.

(4) Sits or kneels on the public right-of-way when attending a parade, festival, performance, rally, demonstration, meeting or similar special event conducted in the public right-of-way pursuant to any permit or license issued by the City.

(5) Sits upon an object intended for sitting in the public right-of-way furnished by the City or by any other public agency.
(6) Sits upon a public sidewalk at or near a transit stop while waiting for public transportation.

(c) Notification by Law Enforcement. No law enforcement officer shall issue a citation, make an arrest, or otherwise enforce this Section against any person, unless the person engages in conduct prohibited by this Section after having first been notified by a law enforcement officer that the conduct violates this Section.

(f) Penalties.

(1) Upon a conviction for a first offense for violating this Section, the court shall impose a fine of not more than five hundred dollars ($500.00) or a sentence of probation, or both.

(2) Upon a conviction for a second or subsequent offense for violating this Section, the court shall impose a fine of not more than five hundred dollars ($500.00), or imprisonment in jail for a period of not more than ninety (90) days, or a sentence of probation, or by a combination of fine, imprisonment, and a sentence of probation. (Ord. 2019-13 §1)

Secs. 10-137—10-140. Reserved.

ARTICLE VIII

Offenses Related to Alcohol and Drugs

Sec. 10-141. Definitions.

For purposes of this Article, all words shall be defined according to the Colorado Liquor Code. (Ord. 94-1 §1)

Sec. 10-142. Alcohol-related violations.

(a) It is unlawful for any person under the age of twenty-one (21) years to represent himself or herself to be over the age of twenty-one (21) years for the purpose of purchasing within the City any fermented malt beverage, vinous or spirituous liquors.

(b) It is unlawful for any person under the age of twenty-one (21) years to attempt to purchase, purchase or obtain, either directly or through an intermediary, any fermented malt beverage, malt, vinous or spirituous liquors by misrepresentation or any other means.

(c) It is unlawful for any person under the age of twenty-one (21) years to possess or consume, whether actual or constructive, fermented malt beverage or malt, vinous or spirituous liquors.

(d) It shall be unlawful to sell fermented malt beverage or malt, vinous or spirituous liquors to any person under the age of twenty-one (21) years, or to permit any fermented malt beverage or malt, vinous or spirituous liquors to be sold or dispensed by a person under twenty-one (21) years of age, or to permit any such person to participate in the sale or dispensing thereof.

(e) It shall be unlawful for any person, whether for remuneration or not, to procure for any person under twenty-one (21) years of age any fermented malt beverage or malt, vinous or spirituous liquors.

(f) It is unlawful in any place of business where alcoholic beverages are sold and consumed upon the premises, for any person to beg or to solicit any patron or customer of or visitor in such premises to purchase any alcoholic beverage for the one begging or soliciting. (Ord. 94-1 §1)

Sec. 10-143. Illegal possession or consumption of alcoholic beverages by an underage person.

(a) Prima facie evidence of a violation of Subsection 10-142(c) above shall consist of:

(1) Evidence that the defendant was under the age of twenty-one (21) years and possessed or consumed alcoholic beverages anywhere in this State; or
(2) Evidence that the defendant was under the age of twenty-one (21) years and manifested any of the characteristics commonly associated with alcoholic beverages intoxication or impairment while present anywhere in this State.

(b) During any trial for a violation of Subsection 10-142(c) above, any bottle, can or any other container with labeling indicating the contents of such bottle, can or container shall be admissible into evidence, and the information contained on any label on such bottle, can or other container shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the bottle, can or other container were composed in whole or in part of alcoholic beverages. A label which identifies the contents of any bottle, can or other container as "beer," "ale," "malt beverage," "fermented malt beverage," "malt liquor," "wine," "champagne," "whiskey" or "whisky," "gin," "vodka," "tequila," "schnapps," "brandy," "cognac," "liqueur," "cordial," "alcohol" or "liqour" shall constitute prima facie evidence that the contents of the bottle, can or other container were composed in whole or in part of alcoholic beverages. (Ord. 94-1 § 1)

Sec. 10-144. Possession of marijuana.

(a) For the purposes of this Section, the following terms shall have the following definitions:

Marijuana means all parts of the plant of the genus Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin, including marijuana concentrate. Marijuana does not include industrial hemp, nor does it include fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other product.

Marijuana accessories means any equipment, products or materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing or containing marijuana, or ingesting, inhaling or otherwise introducing marijuana to the human body.

(b) It shall be unlawful to possess, consume or use two (2) ounces or less of marijuana, and upon conviction thereof, or plea of guilty or no contest thereto, punishment shall not be by imprisonment, but shall be by a fine of not more than one hundred dollars ($100.00).

(c) The provisions of this Section shall not apply to any person who possesses or uses marijuana pursuant to the Dangerous Drugs Therapeutic Research Act.

(d) It shall be unlawful to possess drug paraphernalia (as that phrase is defined under Section 18-18-426, C.R.S.) when such person knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of this Section. In determining whether an object is drug paraphernalia, the Municipal Court may consider, in addition to all other relevant factors, those criteria enumerated under Section 18-18-427, C.R.S.

(e) The provisions of this Section shall not apply to the personal use of marijuana or marijuana accessories by any person who is twenty-one (21) years of age or older to the extent provided by Article XVIII, Section 16(3) of the Colorado Constitution. (Ord. 2010-17 § 1; Ord. 2013-6 § 1)
Sec. 10-144.5. Marijuana—Procuring for or by a minor; sales to a minor.

(a) It is unlawful for any person to purchase for consumption or possession by, to otherwise provide for consumption or possession by, or to sell to any person under the age of twenty-one (21) years, marijuana as defined by Section 10-144 above.

(b) It is unlawful for any person under the age of twenty-one (21) years to possess, attempt to purchase, purchase or obtain marijuana as defined by Section 10-144, either directly or indirectly or through an intermediary, by misrepresentation of age or by any other means. (Ord. 2013-7 §1)

Sec. 10-144.7. Use of flammable gas to extract THC.

The use of flammable gas as a solvent in the extraction of tetrahydrocannabinol ("THC") or any other cannabinoid is prohibited within any residential structure in the City. (Ord. 2015-1, §1)

Sec. 10-145. Open container and re-corking exception.

(a) Unless excepted by Subsection (b) of this Section, it is unlawful for any person to possess or consume by open container any fermented malt beverage or any malt, vinous or spirituous liquor, whether such possession is actual or constructive, in any public place as defined in Section 10-1 of this Chapter, or upon property owned, operated, leased or maintained by the State or any political subdivision or agency thereof, or upon property owned, operated, leased or maintained by the City; provided, however, that it shall not be a violation of this provision to store or consume any fermented malt beverage or any malt, vinous or spirituous liquor in conformance with, and pursuant to the terms of, any validly issued permit or license.

(b) A customer of a hotel or restaurant licensed pursuant to Section 44-3-413, C.R.S., may reseal, remove and transport from the licensed premises one (1) opened container of partially consumed vinous liquor purchased on the premises so long as the original container did not contain more than seven hundred fifty (750) milliliters of vinous liquor. (Ord. 94-15 §1; Ord. 2004-15 §1; Ord. 2018-20 §17)

Secs. 10-146—10-160. Reserved.

ARTICLE IX

Weapons

Sec. 10-161. Definitions.

For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

Blackjack means any billy, sandclub, sandbag, sap or other hand-operated striking weapon consisting, at the striking end, of an encased piece of lead or other heavy substance and, at the hand end, a strap or spring shaft which increases the force of impact; or any device or article consisting of two (2) or more separate portions, linked together by a chin strap or other fastener, which configuration is designed to increase the striking force or impact of the device or article.

Concealment means the deliberate hiding of a weapon upon or near the person with the intent to avoid the lawful detection thereof. It shall be evidence of concealment that the weapon is hidden so as to make it immediately available for use in the fashion in which the weapon is designed to be used.

Crossbow means any device resembling a rifle or handgun in configuration, having a bow or similar device mounted perpendicularly to a stock, grip or frame, and usually equipped with a winch or similar device which draws back the bowstring and cocks the
weapon and which fires an arrow, bolt, quarrel, stone or similar shaft from a groove or depression in the stock, grip or frame by the manipulation of a trigger or similar mechanism.

Firearm means any pistol, revolver, self-loading pistol, rifle, shotgun or any other device designed to shoot, project, throw or hurl a projectile or projectiles by means of the explosion of gunpowder or other explosive substance.

Gravity knife means any knife the blade of which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force and which blade, upon release, becomes locked in place by means of a button, spring, plate, lever or other device.

Knife means any dagger, knife, bayonet, straight razor, dirk, machete, stiletto, sword or sword cane with a blade over three and one-half (3½) inches in length, or any other dangerous instrument designed to inflict cutting, stabbing or tearing wounds; but, as used in this Section, does not include a knife or hatchet of the type customarily used in hunting, fishing or camping when such is being carried for sporting use; and does not include any instruments being used in pursuance of a lawful home use, trade, occupation or profession or otherwise being lawful under Federal or State statutes, or being used as an item of display or a collector's item in any home or place of business.

Switchblade knife means any knife the blade of which opens automatically by manual pressure applied to a button, spring or other device in its handle. (Ord. 91-29 §1)

Sec. 10-162. Carrying weapons.

(a) It is unlawful for any person knowingly to carry a knife or firearm concealed on or about his or her person; provided that this Section shall not apply to persons in their own domiciles or places of business or on property owned by or under their control at the time of the act of carrying, or to persons in private automobiles or other private means of conveyance who are carrying such a weapon for the lawful protection of their or another's person or property or for any other legal purposes.

(1) Nothing in this Subsection (a) shall apply to the Police Department, any police officer or members of the armed forces of the United States or Colorado National Guard acting in the lawful discharge of their duties.

(2) Nothing in this Subsection (a) shall apply to persons who possess a valid permit or license to conceal such weapon or weapons, which license or permit was duly issued pursuant to applicable state or federal law.

(b) It is unlawful for any person to knowingly carry, conceal or cause to be concealed in any vehicle or to use any blackjack, gravity knife, multi-fixed bladed stellate throwing knife, switchblade knife or brass or metallic knuckles. Nothing in this Section shall apply to any police officers or members of the armed forces of the United States or the Colorado National Guard acting in the lawful discharge of their duties. (Ord. 91-29 §1)

Sec. 10-163. Discharging firearms.

(a) Except as provided in Subsection (b) of this Section, it is unlawful for any person other than the any police officers or a member of the armed forces of the United States or the Colorado National Guard acting in lawful discharge of his or her duties, to discharge or cause to be discharged any firearm within or into the limits of the City; provided that this Section shall not apply to persons discharging firearms in shooting galleries or at shooting ranges, where such firearms may be discharged so as not to endanger persons or property and the projectile or projectiles from such firearms are prevented...
from traversing any grounds or space outside the limits of such gallery or range, or to the discharge of a firearm in lawful defense of persons or property.

(b) The City Council may grant written permission to persons within the City to permit the discharge of weapons at a certain locality within the City at a fixed time or times.

(c) Except as provided in Subsection (b) of this Section, it shall be unlawful for any parent, guardian or other person having the care and custody of any minor child under the age of eighteen (18) years to allow or permit any such minor to fire or discharge any cannon, anvil, gun, pistol, rifle, shotgun or other firearm of any kind or nature, or to fire, explode or set off any other such device manufactured or contrived for the purpose of throwing or propelling lead, pellets or other hard substances, powered by compressed air, springs or otherwise, or to fire, set off or explode anything containing powder, gasoline or other combustible or explosive material within the City. (Ord. 91-29 §1; Ord. 2006-19 §1)

Sec. 10-164. Furnishing to certain persons prohibited.

It shall be unlawful for any person to purchase, sell, loan or furnish any gun, pistol, rifle, shotgun or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or any narcotic drug, stimulant or depressant, to any person in a condition of agitation and excitability, or to any minor person under the age of eighteen (18) years. (Ord. 91-29 §1)

Sec. 10-165. Brandishing, etc., deadly weapons.

(a) It is unlawful for any person to display, brandish or flourish a deadly weapon in a public place or for any person to intentionally and without lawful excuse, justification or purpose, aim or point a firearm at another person; pro-

(b) As used herein, deadly weapon includes but is not necessarily limited to firearms, knives, hatchets and dangerous clubs.

(c) Nothing herein shall apply to any police officers, or members of the Colorado National Guard or armed forces of the United States acting in lawful discharge of their duties. (Ord. 91-29 §1)
Sec. 10-166. Confiscation and disposition.

It shall be the duty of the police officers, upon making any arrest and seizing a weapon carried or used in violation of any section of this Article, to keep and place such weapon in such place of safekeeping as may be directed by the police officers, until the final determination of the prosecution for any offense in the prosecution of which such weapon may be evidence. Upon entry of a final plea of guilty or nolo contendere or judgment of guilt, the person so pleading or found guilty shall forfeit to the City any weapon carried or used in violation of any section of this Article. Upon entry of a final plea of guilty or nolo contendere or judgment of guilt, it shall then be the duty of the Municipal Judge to deliver said weapon forthwith to the police officers who shall make disposition of the weapon. (Ord. 91-29 §1)

Sec. 10-167. Carrying, etc., involving intoxicants.

(a) It is unlawful for any person to carry, conceal or display any dangerous or deadly weapon while such person is on the premises of any establishment where malt, vinous or spirituous liquors are sold for consumption on the premises.

(b) The provisions of Subsection (a) shall not apply to any police officer or any other person duly licensed or authorized under applicable state or federal law to carry such weapon concealed.

(c) No person shall have or carry any deadly or dangerous weapon on or about his or her person when drunk, in a state of intoxication or under the influence of drugs. (Ord. 91-29 §1)

Sec. 10-168. Missiles.

It is unlawful for any person willfully, maliciously or recklessly to throw, shoot or project any stone, arrow, pellet, dart, ball bearing or other dangerous missile at or against the person, animal, building, structure, personal property, fixture or vehicle of another; except that the provisions of this Section shall not apply to a person throwing, projecting or shooting any such dangerous missile at any animal in order to protect his or her person or property or the person or property of another from physical injury. (Ord. 91-29 §1)

Secs. 10-169—10-180. Reserved.

ARTICLE X

Offenses Against the Person

Sec. 10-181. Assault.

(a) It is unlawful for any person intentionally to cause bodily injury to another person; provided that this Subsection shall not apply to injury caused by means of a deadly weapon, nor shall it apply in the event of serious bodily injury.

(b) It is unlawful for any person recklessly to cause bodily injury to another person; provided that this Subsection shall not apply in the event of serious bodily injury caused by means of a deadly weapon.

(c) It is unlawful for any person with criminal negligence to cause bodily injury to another person by means of a deadly weapon. (Ord. 91-29 §1)

Sec. 10-182. Menacing.

It is unlawful for any person intentionally to place or attempt to place another person in fear of imminent serious bodily injury by any threat or physical action; provided that, if such menacing is with the use of a deadly weapon, this Section shall not apply. (Ord. 91-29 §1)
Sec. 10-183. Reckless endangerment.

It is unlawful for any person recklessly to engage in conduct which creates substantial risk of serious bodily injury to another person. (Ord. 91-29 §1)

Secs. 10-184—10-200. Reserved.

ARTICLE XI

Minors

Sec. 10-201. Harboring prohibited; exceptions.

(a) It shall be unlawful for any person knowingly to harbor, keep secreted, cohabit with or provide shelter for any unmarried minor without the consent of the parent, legal guardian or other person having legal custody of such minor.

(b) It shall be unlawful for any person to harbor, keep secreted, cohabit with or provide shelter for any unmarried minor when said person knows such minor to be a parole violator or a fugitive from legal process.

(c) The provisions of this Section shall not apply to persons working in their official capacities as employees or members of the staffs or agencies licensed by the State and financed by the United States to harbor minors, nor shall said provisions apply to such agencies; provided that such agencies shall at all times provide specific information concerning minors so harbored and shall release such minors to their parents, legal guardians or any law enforcement agency upon request; and provided, further, that such agencies harboring minors shall, within twenty-four (24) hours after the arrival of a minor, notify the police officers, and within seventy-two (72) hours, if possible, notify the parents, legal guardians or other persons having legal custody of such minors. (Ord. 91-29 §1)

Sec. 10-202. Curfew.

(a) It shall be unlawful for any parent, guardian or other person having legal care or custody of any minor who has not reached his or her sixteenth birthday, to allow or permit any such minor to loiter upon any streets or alleys or any public places, or to loiter in any establishment open to the public generally after the hour of 10:30 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday, or after the hour of 11:30 p.m. on any Friday or Saturday, or before the hour of 5:00 a.m. on any day except:

1. When accompanied by a parent, guardian or other person having legal care or custody of such minor;

2. For lawful employment;

3. When such minor is in the custody of and accompanied by a person who has reached his or her eighteenth birthday and who has, in his or her possession, the written consent of such parent, guardian or other person having legal care or custody of such minor.

(b) It shall be unlawful for any parent, guardian or other person having legal care or custody of any minor who has reached his or her sixteenth birthday, but not his or her eighteenth birthday, to allow or permit any such minor to loiter upon any streets or alleys or any public places or to loiter in any establishment open to the public generally after the hour of 12:00 midnight or before the hour of 5:00 a.m. on any day except as provided in Paragraph (a)(1), (2) or (3) of this Section.

(c) It shall be unlawful for any minor who has not reached his or her sixteenth birthday to loiter upon any street or alley or any public places or to loiter in any establishment open to the public generally after the hour of 10:30 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday, or after the hour of 11:30 p.m. on
(d) It shall be unlawful for any minor who has reached his or her sixteenth birthday but not his or her eighteenth birthday to loiter upon any street or alley or any public places or to loiter in any establishment open to the public generally after the hour of 12:00 midnight or before the hour of 5:00 a.m. on any day, except as provided in Paragraph (a)(1), (2) or (3) of this Section. (Ord. 91-29 §1)

Sec. 10-203. Distribution of cigarettes and tobacco products to minors.

(a) It is unlawful for any person eighteen (18) years of age or older to furnish to any person who is under eighteen (18) years of age, by gift, sale or other means any cigarettes or tobacco products as defined by Section 39-28.5-101(5), C.R.S.

(b) It shall be unlawful for any person under the age of eighteen (18) years to attempt to purchase or obtain, either directly or through an intermediary, any cigarette or tobacco products as defined by Section 39-28.5-101(5), C.R.S.

(c) It shall be unlawful for any person to sell or offer to sell any smokeless tobacco product as defined by Section 18-13-121(4)(a) C.R.S., by use of a vending machine or other coin-operated machine.

(d) It is unlawful for any person to sell or offer to sell any cigarette or tobacco products as defined by Section 39-28.5-101(5) C.R.S., other than a smokeless tobacco product as defined by Section 18-13-121(4)(a), C.R.S., by use of a vending machine or any coin-operated machine, that does not display a warning sign placed in a prominent place on such machine. The warning sign shall have a minimum height of three (3) inches and a width of six (6) inches, and shall read as follows:

WARNING

IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN (18) YEARS OF AGE TO PURCHASE CIGARETTES AND TOBACCO PRODUCTS AND, UPON CONVICTION, A FIFTY DOLLAR ($50.00) FINE MAY BE IMPOSED.

(e) Any person who is convicted of, or pleads guilty or nolo contendere to, a violation of Subsection (a), (b) or (d) shall be punished by a fine of two hundred dollars ($200.00). Any person who is convicted of, or pleads guilty or nolo contendere to, a violation of Subsection (c) shall be punished by a fine of fifty dollars ($50.00). (Ord. 91-29 §1; Ord. 94-1 §1)

Secs. 10-204—10-220. Reserved.

ARTICLE XII

Offenses Against Government Division

Sec. 10-221. Definition.

Law enforcement officer or law enforcement officers, as used in this Article, means any person defined as a peace officer by Section 18-1-901, C.R.S., who is in uniform or who has displayed his or her credentials to the person whose arrest is attempted. (Ord. 94-1 §1)

Sec. 10-222. False alarms to agencies of public safety by alarm devices.

(a) An alarm device is a device which is designed to cause police, fire or other emergency response, investigation and safeguarding of property at the location of an event reported:

1. By a signal transmitted, telephoned, radioed or otherwise relayed to any organization, official or volunteer, for dealing with emergencies involving danger to life or property, by an alarm device or by any person acting in response to a signal activated by such device; or

2. By an audible or visible signal designed to notify a person within audible or visible range or the signal.
(b) It shall be unlawful for any person other than qualified and licensed installers and maintenance persons to install, work on or maintain an alarm device or the components thereof.

(c) The owner or occupant of property that maintains an alarm device shall designate a person or company to be responsible for the monitoring and maintenance of the alarm device.

(d) The license of a designated person or company doing business in the City for the purpose of installing or maintaining alarm devices may be revoked for cause. Cause for license revocation includes:

1. Failure to notify the City's communications center of alarm systems that are temporarily out of service.

2. Failure to notify the City's communications center of a legitimate alarm system activation.

3. Failure to correct problems within an alarm system that prohibit the system from operating properly within ten (10) working days. Extensions may be granted in writing by the Fire Chief or the Chief of Police.

4. An alarm system is not installed properly or according to code.

5. The alarm company, installer or maintenance person or company responsible fails to respond within a reasonable time (usually one (1) hour) to restore an alarm system to proper working order or remove it from service temporarily.

(e) When the Police or Fire Department, or any other City organization or agency responsible for emergency responses, responds to a signal activated by an alarm device, as defined above, and it appears after proper investigation that a false alarm did occur, then the owner or occupant of the premises to which the response is made, the designated person or company responsible for monitoring, and the person or company responsible for the installation and maintenance of the alarm device, shall each be subject to a false alarm service warning or fee.

1. False alarms during the first thirty (30) days after the installation of a new alarm device shall result in a warning.

2. The first five (5) false alarms at a particular location in each calendar year shall result in a warning. The owner, occupant, person or company found responsible for said premises shall be subject to the following presumptive service fee schedule:

   a. A service fee of fifty dollars ($50.00) for the sixth, seventh, eighth, ninth and tenth occurrence thereafter; and

   b. A service fee of one hundred dollars ($100.00) for the eleventh, twelfth, thirteenth, fourteenth and fifteenth occurrence.

   c. The service fee shall be payable to the Finance Director and the City may maintain an action for said fee and all costs of collection. The notice of assessment of the service fee shall state that the fee may be appealed to the City Council within ten (10) days of the date of the assessment pursuant to this Subsection (e), provided that the fee is first paid to the City Clerk.

   d. Provided, however, the City shall have the discretion, based on the existence of aggravating or mitigating circumstances, to deviate from the presumptive service fee schedule and instead file an action in the Black Hawk Municipal Court as set forth in Section 10-222(e)(3) below.
(3) For those fire alarms in excess of fifteen (15) alarms in any calendar year, the provisions of this Subsection (e)(3) shall apply. Commencing on the sixteenth false alarm and any additional false alarms thereafter, the City shall be authorized to commence an action in the Black Hawk Municipal Court, and shall be authorized to seek the following remedies, which remedies shall be cumulative, and nothing in this Section shall be construed as either prohibiting or limiting the City from pursuing such other remedies or penalties, in an action at law or in equity:

a. A criminal penalty as set forth in Section 1-73 of this Code, but with a minimum penalty of five hundred dollars ($500.00) for each such alarm; and

b. A mandatory injunction, requiring the installation of a new alarm device based on the proliferation of false alarms as defined herein.

c. Provided, however, the City shall have the discretion, based on the existence of mitigating circumstances, to impose a service fee instead of seeking relief in the Black Hawk Municipal Court.

(4) Upon receipt of a written notice that a service fee is due under this Section 10-222, the owner, occupant, person or company found responsible for the premises or the false alarm may appeal the assessment of the service fee to the City Council. Such appeal shall be written and shall be filed with the City Clerk within ten (10) days of the date of the assessment. The appeal shall state:

a. The name of the appellant;

b. The location of the premises where the false alarm occurred;

c. The dates and circumstances of all false alarms occurring on the same premises within the previous twelve (12) months;

d. The name of the agency within the City assessing the service fee; and

e. The appellant’s grounds for believing that the service fee is not due under this Section.

(5) If the service fee is not paid within ten (10) days of the assessment, any appeal shall be denied. If the appeal is upheld by the City Council, the service fee shall be refunded.

(6) The City Council shall have no jurisdiction to review an appeal unless it is timely filed and the service fee timely paid. If an appeal is not timely filed, the City Council shall deny it, stating the reason therein.

(7) The decision of the City Council to deny or grant the relief requested in an appeal shall be final.

(8) Upon a finding of unusual hardship, the City Council may grant a waiver of the future application of this Section to an owner or occupant of a premises or a person or company doing business within the City. Such a waiver shall not be applied retroactively.

(9) All service fees and costs of collecting such fees shall be a debt due and owing the City, which shall be collected in any manner permitted by State law or local ordinance.

(10) In the event the City elects to seek relief in the Black Hawk Municipal Court, the City Council shall not have any jurisdiction over such matter.
(f) It shall be unlawful for a person knowingly to cause a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property. (Ord. 91-29 §1; Ord. 92-9 §1; Ord. 94-1 §1; Ord. 2016-2 §1)

Sec. 10-223. False reports, generally.

(a) It is unlawful for any person to report the existence of a fire, other emergency or medical emergency to the Police Department, Fire Department, an ambulance service provider or any other agency empowered to deal with an emergency involving risk or injury to persons or property, when such person knows the report to be false. For the purposes of this Section, fire department means any fire protection district or firefighting agency of the State, County or City; whether the employees or officers of such agency are volunteers or receive compensation for their services as firemen, or both.

(b) It is unlawful for any person to report or cause to be reported to the Police Department any information concerning the commission of any offense or other incident which would require police action, when:

(1) Such person knows that no such offense or other incident has occurred; or

(2) Such person knows the information is false or that he or she has no such information.

(c) It is unlawful for any person to make telephone calls to the Police Department, Fire Department, ambulance service providers and emergency telephone numbers, including 911, when such person makes the call knowingly and for no legitimate purpose. This Subsection shall apply regardless of whether the person who makes the call speaks or in any way communicates to the City employee answering the call.

(d) This Section does not apply to reports of the existence or placement of a bomb or other explosive in any public or private place or vehicle designed for transportation of persons or property. (Ord. 91-29 §1; Ord. 94-1 §1; Ord. 2006-1 §1)

Sec. 10-224. False information.

(a) Incriminating another. It shall be unlawful for a person knowingly to give false information to any law enforcement officer or any other person within the City for the purpose or intent of implicating another.

(b) Fictitious reports. It shall be unlawful for a person to:

(1) Report to law enforcement authorities or any other person within the City an offense or other incident knowing that it did not occur; or

(2) Pretend to furnish such persons with information relating to an offense or incident when he or she knows that he or she has no information relating to such offense or incident.

(c) Fictitious names and addresses. It shall be unlawful for a person to give a false name or address in the City with the intent of concealing or hiding one's own real name and/or address and/or age.

(d) No person shall use or attempt to use a document, altered document or other instrument which falsely appears or purports to be in all respects a lawfully issued or authentic driver's license, identification card, registration, birth certificate or other document with the intent of concealing or hiding one's real name and/or address and/or age and/or status. (Ord. 91-29 §1; Ord. 96-8 §1)

Sec. 10-225. Impersonation of City employees.

(a) It is unlawful for any person who is not a law enforcement officer to impersonate or represent to others that he or she is a law enforcement officer.
(b) It is unlawful for any person not a City officer or City employee to willfully or fraudulently represent himself or herself to be a City officer or an employee of the City.

(c) It is unlawful for any person to purport to perform the duties of any City officer or employee if he or she is not an authorized officer or employee of the City. (Ord. 91-29 §1; Ord. 94-1 §1)

Sec. 10-226. Interfering with, obstruction, etc., public officers or employees.

(a) It is unlawful for any person to willfully and without authority interfere with a law enforcement officer in the discharge of his or her duty or to fail or refuse to comply with the order of the law enforcement officer.

(b) It is unlawful for any person to drive a vehicle to or close by the scene of a fire, explosion, traffic accident, riot or impending riot, other disaster or investigation so as to obstruct or impede the arrival, departure or operation of any fire truck, police vehicle, ambulance or any other emergency vehicle, or to fail to move a vehicle from the scene of such disaster when ordered to do so by a law enforcement officer in the performance of his or her duties in coping with such fire, explosion, traffic accident, riot or impending riot, other disaster or investigation.

(c) It is unlawful for any person to knowingly resist, interfere with, impede or obstruct any law enforcement officer, firefighter, emergency medical services provider, rescue specialist, volunteer, City employee or other public official who is attempting to discharge or is in the course of discharging an official duty.

(d) It is unlawful for any person to threaten violence, reprisal or any other injurious act to any law enforcement officer, firefighter, emergency medical services provider, rescue specialist, volunteer, City employee or other public official who is engaged in the performance of his or her official duties, or to make such a threat by reason of such officer's performance of his or her official duties.

(e) For purposes of this Section, the following words shall be construed to have the meanings defined below:

Emergency medical services provider means a member of a public or private emergency medical service agency, whether that person is a volunteer or receives compensation for services rendered as such emergency medical service provider.

Rescue specialist means a member of a public or private rescue agency, whether that person is a volunteer or receives compensation for services rendered as such rescue specialist.

Volunteer means a person acting in good faith to render such care or assistance without compensation at the place of an emergency or accident. (Ord. 91-29 §1; Ord. 94-1 §1; Ord. 96-27 §§1, 2)

Sec. 10-227. Resisting arrest; escaping custody; rescuing prisoner.

(a) It is unlawful for any person to prevent or attempt to prevent a law enforcement officer, acting under color of his or her official authority, from effecting the arrest of any person, by the use of threatened use of force or physical violence or any other means which creates a substantial risk of causing physical injury to such law enforcement officer.

(b) It is unlawful for any person to escape or attempt to escape, or in any manner aid another to escape, or attempt to rescue or rescue a person, from the custody of a law enforcement officer or from the custody of any person aiding such law enforcement officer after being commanded by such law enforcement officer to so take such person into custody; provided that the provisions of this Section shall not apply
when the escapee is being held for a felony or charged with any felony. (Ord. 91-29 §1; Ord. 94-1 §1)

Sec. 10-228. Disobeying; refusing to aid.

(a) It is unlawful for any person knowingly to disobey the lawful or reasonable order of law enforcement officers given incident to the discharge of the official duties of such law enforcement officers when coping with an emergency explosion or other disaster.

(b) A person commits an unlawful act when, upon command by a person known to him or her as a law enforcement officer, he or she unreasonably refuses to aid such law enforcement officer in coping with an emergency situation. (Ord. 91-29 §1; Ord. 94-1 §1)

Secs. 10-229—10-240. Reserved.

ARTICLE XIII

Disposition of Lost, Abandoned or Recovered Stolen Personal Property

Sec. 10-241. Custody of property.

The Chief of Police shall have custody of all lost, abandoned and recovered stolen personal property coming into the possession of the City and property ordered confiscated by the Municipal Court. (Ord. 91-29 §1)

Sec. 10-242. Storage of abandoned vehicles and other property.

Whenever a motor vehicle or other personal property is found abandoned upon the streets or public places of the City or whenever personal property shall for any reason come into the possession of the Chief of Police without a claimant, the Chief of Police shall, pending the disposal of said property, cause such property to be stored on City property or with a private person engaged in the business of storing personal property. (Ord. 91-29 §1)

Sec. 10-243. Investigation re ownership.

Upon coming into possession of lost, abandoned and stolen personal property, the Chief of Police shall cause an investigation to be made into the ownership of such property. (Ord. 91-29 §1)

Sec. 10-244. Disposition of motor vehicles.

The Chief of Police shall dispose of lost, abandoned or recovered stolen motor vehicles coming into his or her possession in accordance with the procedures provided therefor by state statutes or, in the absence of such statutes, in accordance with a procedure approved by the department or agency of the State responsible for the issuance of certificates of title for motor vehicles. (Ord. 91-29 §1)

Sec. 10-245. Notification of owner of other property if known.

If the Chief of Police determines who owns lost, abandoned or recovered stolen personal property, except motor vehicles and property ordered confiscated by the Municipal Court, he or she shall give notice in writing to such owner that his or her property is in the possession of the Chief of Police and that it will be sold or otherwise disposed of by the City unless such owner reclaims the property in the manner provided for by law within twenty (20) days after the effective date of the notice. The notice shall be sent to the owner at his or her last known address by regular first class United States mail, postage prepaid, and the notice shall be effective when mailed. (Ord. 91-29 §1)

Sec. 10-246. Advertising for owner if not known.

(a) If the owner of such lost, abandoned or recovered stolen personal property, motor vehicles excepted, cannot be determined by the Chief of Police, he or she shall periodically, and not less than once a year, cause notice to be published in a newspaper of general circulation in
the City, which notice shall be published on three (3) different days, which may be consecutive days, and shall contain the following information:

(1) A description of the lost, abandoned or recovered stolen personal property then in the possession of the Chief of Police; and

(2) A statement that such property will be disposed of by the City unless the owner thereof claims such property in the manner provided for by law within ten (10) days after the publication of the notice.

(b) If, at any time prior to the City's disposition of such lost, abandoned or recovered stolen personal property, a person claims such property as the owner thereof, the Chief of Police shall return the property to such claimant, provided that the claimant submits evidence of his or her ownership which is sufficient to satisfy the Chief of Police that the claim is rightful, and provided that the claimant tenders to the Chief of Police the cost incurred by the City in obtaining possession of such property, in the storage of such property and in the publication of notice or mailing of notice relating to such property.

(c) In the event that such lost, abandoned or recovered stolen personal property, motor vehicles excepted, has been in the possession and custody of the Chief of Police for at least thirty (30) days, and in the event that such property remains unclaimed after the giving of notice and the expiration of time following the notice as provided for in Sections 10-245 and 10-246 of this Article, the Chief of Police shall make recommendations to the Board of Aldermen as to the disposition of such property and the Board of Aldermen shall, by motion, provide for the disposition of such property. (Ord. 91-29 §1; Ord. 94-1 §1)

Sec. 10-247. Procedure for sale.

In the event the Board of Aldermen directs that the property be disposed of by sale, the following sale procedure shall be followed:

(1) The City Clerk shall cause a notice of the sale to be published in a newspaper of general circulation in the City. Such notice shall be published on three (3) different days, which days may be consecutive days, and shall set forth the date, time and place of the sale (which date, time and place shall be at least ten [10] days after the last publication of notice of sale), a description of the property to be sold, and a statement that the property will be sold at public auction to the highest bidder for cash.

(2) At the date, time and place designated for the sale of the lost, abandoned or recovered stolen personal property or property ordered confiscated by the Municipal Court as set forth and provided for in the notice of sale, the Chief of Police shall cause such property to be sold at public auction to the highest bidder for cash. No money or negotiable instruments shall be sold at the sale, but shall become the property of the City if unclaimed by the owner thereof. In the event that a bid is not made for an article of personal property offered at the sale, such article of personal property shall become the property of the City.

(3) Upon consummation of the sale of the property, the City Clerk shall issue a receipt to the successful bidder, which receipt shall indicate thereon the article of personal property sold and the amount paid therefor. Upon exhibiting the receipt to the Chief of Police, the purchaser shall be entitled to possession of the article so purchased.

(4) The proceeds of the sale of such property shall be first applied upon storage bills, towing bills, publication fees and other costs
of the keeping and sale of such property, and the balance of such proceeds shall be placed in the general fund of the City.

(5) The sale and conveyance of the property shall be without redemption.

(6) No license shall be required of the person or persons conducting the auction provided for herein. (Ord. 91-29 §1)

Sec. 10-248. Holding as evidence.

In the event the City Attorney, or other person charged with the duty of prosecuting violations of the City, state or federal laws requests that any of the lost, abandoned or recovered stolen property be held, the Chief of Police shall retain custody of such property and shall not sell the same until such property is no longer needed in the prosecution noted. (Ord. 91-29 §1)

Secs. 10-249—10-260. Reserved.

ARTICLE XIV

Prohibited Residency of Sex Offenders

Sec. 10-261. Findings and intent.

The City Council hereby finds that sexual predators and the specified sex offenders who use physical violence or who prey on children present an extreme threat to the public safety. Sexual predators and the specified sex offenders have a high rate of recidivism, making the cost of sex offender victimization to society at large extremely high. Removing such offenders from regular proximity to places where children are located and limiting the frequency of contact is likely to reduce the risk of an offense. This Chapter is intended to serve the City's compelling interest to promote, protect and improve the public health, safety and welfare by creating areas, around locations where children regularly congregate in concentrated numbers, where sexual predators and specified sexual offenders are prohibited from establishing temporary or permanent residence. (Ord. 2016-8 §1)

Sec. 10-262. Definitions.

For purposes of this Article XIV, the following terms shall have the following meanings:

Permanent residence means a place where a person abides, lodges, or resides for five (5) or more consecutive days.

Temporary residence means a place where a person abides, lodges, or resides for a period of five (5) or more days in the aggregate during any calendar year and which is not the person's permanent residence, or a place where a person routinely abides, lodges, or resides for a period of five (5) or more consecutive or nonconsecutive days in any month and which is not the person's permanent address. (Ord. 2016-8 §1)

Sec. 10-263. Prohibitions.

(a) It shall be unlawful for a person to establish a permanent residence or temporary residence within one thousand (1,000) feet of any park, City-owned open space, or any designated public or private school bus stop when a person meets either of the following criteria:

(1) The person has been found to be a sexually violent predator pursuant to Section 18-3-414.5 C.R.S;

(2) The person is required to register under the Colorado Sex Offender Registration Act, C.R.S. Section 16-22-101 et seq., because of being convicted of a felony for an offense requiring registration; having multiple convictions for offenses requiring registration; or having offenses requiring registration involving multiple victims.

(b) It is unlawful to let or rent any portion of any property, place, structure, trailer or other vehicle with the knowledge that it will be used
as a permanent or temporary residence by any person prohibited from establishing such permanent or temporary residence pursuant to this Article XIV. (Ord. 2016-8 §1)

Sec. 10-264. Exceptions.

A person is not guilty of a violation of this Article XIV if:

(a) The person established the permanent or temporary residence prior to the effective date of this Article XIV; provided, however, that this exception shall not apply if the person committed the offense for which registration under the Colorado Sex Offender Registration Act is required after the effective date of this Article;

(b) The person is placed in the residence pursuant to a State of Colorado foster care program; or

(c) The park, City-owned open space, or designated public or private school bus stop was opened after the person established the permanent or temporary residence, and the park, City-owned open space or bus stop is not replacing an existing park, City-owned open space or designated public or private school bus stop. (Ord. 2016-8 §1)

Sec. 10-265. Measurement.

For purposes of determining the minimum distance separation required herein, the measurement shall be made by following a straight line from the outer property line of the property on which the park, City-owned open space or designated public or private school bus stop is located to the nearest point on the outer property line of the property on which the permanent or temporary residence is located. (Ord. 2016-8 §1)
conduct himself or herself on the same in violation of any order, rule, or regulation concerning any matter prescribed in this subsection (a), limiting or prohibiting the use or activities or conduct in such public building or on such public property, issued by the City Council, the City Manager or any other official of the City of Black Hawk designated by City Council by ordinance or resolution and having the power of control, management, or supervision of the building or property. In addition to any authority granted by any other law, City Council, the City Manager or any other official designated by the City Manager under this subsection may adopt such orders, rules, or regulations as are reasonably necessary for the administration, protection, and maintenance of such public buildings and property, specifically, orders, rules, and regulations upon the following matters:

(1) Preservation of property, vegetation, wildlife, signs, markers, statues, buildings and grounds, and other structures, and any object of scientific, historical, or scenic interest;

(2) Restriction or limitation of the use of such public property as to time, manner, or permitted activities; and

(3) Prohibition of activities or conduct on public property which may be reasonably expected to substantially interfere with the use and enjoyment of such places by others or which may constitute a general nuisance.

(b) No conviction may be obtained under this Section unless notice of such limitations or prohibitions is prominently posted at all public entrances to such property, or unless such notice is actually first given to the person by the City Manager, by any other official designated by City Council under subsection (a) of this Section, or by any law enforcement officer of the City of Black Hawk.

(c) All officers of the Black Hawk City Police Department shall have the authority to communicate to any person the terms of any orders, rules or regulations adopted pursuant to subsection (a) of this Section and the additional authority to enforce subsection (a) and all orders, rules and regulations adopted pursuant to subsection (a) by removing any violator from the public place where the violation occurred and by issuing and serving upon such violator a summons and complaint or such other charging documents as are appropriate.

(Ord. 2019-12 §1)

Sec. 10-274. Unauthorized camping on public property prohibited.

(a) It shall be unlawful for any person to camp upon any public property, except in any location where camping has been expressly allowed by the City of Black Hawk.

(b) No officers of the Black Hawk City Police Department shall issue a citation, make an arrest or otherwise enforce this Section against any person unless:

(1) The officer orally requests or orders the person to refrain from the alleged violation of this Section and, if the person fails to comply after receiving the oral request or order, the officer tenders a written request or order to the person warning that if the person fails to comply the person may be cited or arrested for a violation of this Section; and

(2) The officer attempts to ascertain whether the person is in need of medical or human services assistance, including, but not limited to, mental health treatment, drug or alcohol rehabilitation, or homeless services assistance. If the officer determines that the person may be in need of medical or human services assistance, the officer shall make reasonable efforts to contact and obtain the assistance of a designated human service outreach worker, who in turn shall assess the needs of the person and, if warranted, direct the person to an appropriate provider of medical or human services assistance in lieu
of the person being cited or arrested for a violation of this Section. If the officer is unable to obtain the assistance of a human services outreach worker, if the human services outreach worker determines that the person is not in need of medical or human services assistance, or if the person refuses to cooperate with the direction of the human services outreach worker, the officer may proceed to cite or arrest the person for a violation of this section so long as the warnings required by paragraph (1) of this subsection have been previously given.

(c) Cleanup of Unauthorized Camping Sites. Upon violation of this Section, officers may remove and store all unclaimed personal property found at an unauthorized camping site. Illegal items, such as illicit drugs and any items that reasonably appear to be evidence of a crime will be turned over to the appropriate law enforcement agency. Any items otherwise not regarded as having apparent utility or that are in an unsanitary condition will be immediately discarded. Removal of personal property under this Section shall be executed pursuant to the following procedure:

1. At least seventy-two (72) hours prior to the proposed cleanup date, the City will post a notice stating the date and time of the cleanup. The notice will be posted in the general vicinity of the personal property to be removed.

2. In the event of the existence of a condition posing an imminent danger of damage or injury to or loss of life, limb, property or health, the City shall provide a notice of cleanup no more than twenty-four (24) hours prior to the proposed cleanup date.

3. Personal property removed from illegal camp sites shall be stored in a secure location and shall be held for a period of at least thirty (30) days from the date the cleanup occurred.

4. An individual may claim ownership of an item of personal property within thirty (30) days from the last date that the cleanup occurred. The City will not return items reasonably believed to be marijuana or products containing marijuana, and will dispose of such products in accordance with its Black Hawk City Police Department policies procedures for the disposal of illicit substances.

5. After the thirty (30) day storage period elapses, unclaimed personal property will be disposed of by either discarding, recycling, or otherwise disposing of such items as determined by the Chief of Police.

(Ord. 2019-12 §1)

Sec. 10-275. Violations and penalties.

Any person who violates any Section of this Article is guilty of a misdemeanor and a public nuisance pursuant to Section 7-2 of this Code. Any persons convicted of a violation of any section of this article shall be punished as provided in Section 1-73(a) of this Code, and may also be punished pursuant to the provisions of Article 1 of Chapter 7 as the same may be applicable.

(Ord. 2019-12 §1)
# CHAPTER 11

**Streets, Sidewalks and Public Property**

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ARTICLE I

Sidewalks

Sec. 11-1. Definition.

As used in this Article, the term sidewalk means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, or any streetscape located within the City, intended for the use of pedestrians. (Ord. 92-40 §2)

Sec. 11-2. Removal of snow and ice from sidewalks; maintenance responsibility.

(a) Every person in charge of or in control of any building or lot of land within the City fronting or abutting on a sidewalk, whether as owner, tenant, occupant or otherwise, shall remove and clear away, or cause to be removed and cleared away, snow and ice from the portion of any sidewalk that fronts or abuts any building or lot of land, within six (6) hours after the cessation of any snowfall. In the event that ice is present on the sidewalk which cannot be safely removed without damaging the sidewalk, the person or entity charged with the snow removal shall put sand or other abrasive material on the sidewalk to make travel thereon reasonably safe, and shall clean such sand or abrasive material from the sidewalk as soon as weather permits.

(b) For purposes of this Section 11-2 and Article I of Chapter 11, the maintenance responsibility of the owner, tenant, occupant or otherwise, including removal of snow and ice shall be as follows:

(1) From the back of curb both horizontally and vertically to the building shall be the responsibility of the owner, tenant, occupant or otherwise;

(2) If a wall or other building structure including drainage appurtenances such as a roof drain or a sidewalk chase is located on or within the curb, the owner, tenant, occupant or otherwise shall maintain such curb, including the gutter thereon;

(3) Any non-standard curb in terms of either height or width, and any ramp or stairway extending to the gutter shall be maintained by the owner, tenant, occupant, or otherwise;

(4) The horizontal surface of any drainage inlet within a sidewalk shall be maintained by the owner, tenant or occupant;

(5) Regardless of location relative to the back of curb, the City shall not be responsible for any area of the right-of-way in which a property owner has installed heated facilities in any such area; and

(6) The City shall be responsible for any gutters and drainage facilities within the public right-of-way that are not located within the area of responsibility of the owner, tenant, occupant or otherwise as set forth in this Section 11-2. (Ord. 92-40 §1; Ord. 98-50 §1; Ord. 2019-29, §1)

Sec. 11-3. Deposit of snow and ice in public roadway.

It is a civil infraction to remove any snow or ice from any parking lot, private road or private driveway and deposit or dump the same upon or into any public street, road or highway. (Ord. 92-40 §3; Ord. 94-1 §1)

Sec. 11-4. Civil liability for noncompliance.

In the event that the failure to comply with the provisions of this Section results in personal injury, the person or entity responsible for compliance shall be liable for any resulting injuries. Any civil liability for injuries caused by the failure to remove snow or ice, or otherwise the
failure to comply with this Section, shall be imposed upon the person or entity responsible for compliance, and not upon the City. (Ord. 93-14 §1)

Sec. 11-5. Construction required; permit.

It is a civil infraction for any person to lay out, construct or reconstruct any sidewalk, curb or gutter without first obtaining a permit therefor. (Ord. 94-1 §1)

Sec. 11-6. Application for permit; designation of grade and line.

(a) Application for the permit required shall be made to the Building Inspector on a form furnished for that purpose.

(b) Before any construction or reconstruction is commenced, the Public Works Director shall designate the grade upon which, and the line or location at which, the sidewalk, curb or gutter shall be constructed. (Ord. 94-1 §1)

Sec. 11-7. Specifications.

All sidewalks, curbs and gutters which are constructed or reconstructed shall be constructed or reconstructed in accordance with the specifications adopted by the Board of Aldermen and filed in the office of the Public Works Director. All sidewalks within the incorporated limits of the City, except in residential districts, shall be of a uniform width of ten (10) feet subject to the variance procedure set forth in Section 16-366 of this Code. (Ord. 94-1 §1; Ord. 97-22 §1)

Sec. 11-8. Determination of hazard; notice.

When the Public Works Director determines that a sidewalk's condition is such that it presents a hazard to members of the public, or is otherwise in a state of disrepair, a notice to repair the sidewalk shall be sent to the owner or agent in charge of the property adjacent to or abutting the sidewalk. (Ord. 93-13 §1)

Sec. 11-9. Notice to property owner.

(a) Service of the notice provided in Section 11-8 above shall be made by either serving such notice on the person named in the notice, or by sending such notice by first class mail to the residence or place of business of the person named in the notice and by posting such notice in a conspicuous place on the property abutting or adjacent to the subject sidewalk. If the notice is served on other than the owner of the property adjacent to or abutting the subject sidewalk, a copy of the notice shall also be mailed to the owner at the address contained in the County Assessor's records.

(b) Any notice issued under this Article shall contain:

1. A description of the required construction, reconstruction or repairs;
2. A statement of the condition of the sidewalk that constitutes the hazard or requires repair;
3. A statement advising of the right to an administrative hearing to appeal the notice to the City Manager if requested within thirty (30) days; and
4. A requirement that compliance shall be made within forty-five (45) days from the date of issuance of the notice; and this notice shall also indicate that failure to make the repairs within forty-five (45) days shall be unlawful, and the failure to comply with the notice may result in work being done by the City at the expense of the party to whom the notice is issued. (Ord. 93-13 §2)

Sec. 11-10. Failure to comply with notice.

If the person to whom the notice is directed pursuant to this Article fails to comply within the time specified in the notice, the Public Works Director may, in his or her discretion, order the construction, reconstruction or repair of the
sidewalk by or on behalf of the City, and the procedures outlined in this Article for collection of costs and expenses shall apply in addition to the penalties provided by this Article. (Ord. 93-13 §3)

Sec. 11-11. Assessment of costs.

(a) When work has been performed pursuant to this Article, the Public Works Director shall bill any or all owners, occupants, lessees or holders of legal or equitable interest for the costs and expenses necessary to repair the sidewalk.

(b) If the owner, occupant, lessee or holder of legal or equitable interest of or in the property shall fail within thirty (30) days after billing to pay the costs and expenses of work by the City, such costs and expenses may be collected by the City in a civil action or assessed and filed as a lien against the property.

(c) If the costs of construction, reconstruction or repair have not been otherwise collected, the Treasurer shall prepare a statement enumerating the actual costs plus fifteen percent (15%) of the costs for inspection and other additional administrative costs. The costs enumerated in this statement shall be a first and prior lien upon the property relating back to the date upon which the construction, reconstruction or repair was performed. A copy of this statement shall be deposited in the United States mail or personally hand-delivered to the owner. The owner may request a hearing before the City Manager to contest the amount of the costs. Such request must be made in writing and be filed with the Finance Director within thirty (30) days of the date of mailing or service of the first statement to the owner. The owner shall be given at least two (2) weeks' written notice of the date, time and place of any hearing scheduled before the City Manager. The decision of the City Manager shall be final. If the statement remains unpaid, the amount shall be certified by the Finance Director to the County Treasurer. The County Treasurer, upon receipt of the certified statement, is hereby authorized to place the amount upon the tax list for the current year and to collect that amount in the same manner taxes are collected with a ten percent penalty thereon. (Ord. 93-13 §4)

Sec. 11-12. Liability of owner.

In the event that an owner or occupant fails to comply with the terms of this Article, or otherwise permits a sidewalk to become hazardous or in a state of disrepair, the owner or occupant shall be liable for any resulting injuries. Any civil liability for injuries caused by the condition of the sidewalk or the failure to comply with the ordinance codified herein shall be imposed solely upon the owner or occupant, and not upon the City. (Ord. 93-13 §5)

Sec. 11-13. Penalty.

Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. The penalties specified in this Section shall be cumulative and nothing shall be construed as either prohibiting or limiting the City from pursuing such other remedies or penalties in an action at law or equity. (Ord. 94-1 §1)

Secs. 11-14—11-30. Reserved.

ARTICLE II

Streets

Sec. 11-31. Prohibition.

No person shall drive, operate or move upon or over any City street or roadway any vehicle, object or contrivance in such a manner as to damage a City roadway, street or related structure. (Ord. 92-38 §1)
Sec. 11-32. Strict liability for damage.

Any person causing damage to any City street, roadway or related structure shall be strictly liable for any damage caused to the roadway, street or related structure. (Ord. 92-38 §2)

Sec. 11-33. Joint and several liability.

Whenever a driver is not the owner of such vehicle, object or contrivance, but is so operating, driving or moving the same with the express or implied permission of said owner, then said owner and driver shall be jointly and severally liable for any such damage. (Ord. 92-38 §4)

Sec. 11-34. Penalty.

Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. The penalties specified in this Section shall be cumulative and nothing shall be construed as either prohibiting or limiting the City from pursuing such other remedies or penalties in an action at law or equity, including an action for injunctive relief to prohibit further damage to the City's streets, roadways or related structures. (Ord. 94-1 §1)

Sec. 11-35. Right-of-way use permit.

(a) It shall be unlawful for any person to construct, reconstruct, make or alter any street, driveway, curb, sidewalk or excavation, and/or alter any opening, haul, move or remove debris or material, or to perform work of any kind within any platted, existing or improved public right-of-way in the City which results in physical alterations thereof, or otherwise disrupt the normal flow of traffic thereon, unless such person has first obtained a right-of-way use permit for the performance of the work. Applicants for such permit shall file an application with the Public Works Director or his or her designee on a form to be furnished by the Department of Public Works. All applicants shall conform with the requirements of this Section. The Public Works Director may require the applicant to file engineering plans, specifications, utility locates, sketches, timetables and/or traffic control plans showing the proposed work in sufficient detail to permit determination of compliance with the City's regulations and standards.

(b) Each permit application shall state, at a minimum, the starting date and estimated completion date. The permit shall be valid only for the time period so specified. If the work is not completed during the specified period appearing on the permit, the applicant may apply to the Public Works Director for an extension. An extension may be refused if the Public Works Director finds that the work performed under the original permit, or as extended, has not been satisfactorily performed.

(c) The holder of a permit issued under this Section shall notify the Police Department and the Public Works Department no later than twenty-four (24) hours prior to the performance of any work expected to disrupt the normal flow of traffic on any City right-of-way.

(d) Before a permit is issued, the applicant shall provide the City with a certificate of insurance with limits of at least one million dollars ($1,000,000.00) for combined single bodily injury and property damage, and a deductible of not less than one thousand dollars ($1,000.00). The certificate of insurance shall insure the City against claims and damages for personal injury and for property damage which may arise from or out of the performance of the work designated above, whether such performance is by the applicant, a subcontractor, designee or agent of the applicant. The insurance required shall cover, in addition, motor vehicle liability, worker's compensation and all other claims whatsoever to persons and property. The insur-
(e) Security in the form of cash or irrevocable letter of credit shall be mandatory for any work within the public right-of-way. The amount of such security shall be equal to one hundred ten percent (110%) of the estimated cost necessary to return the right-of-way to its original condition.

(f) The Public Works Director shall have the right and authority to draft any policy, regulation or guideline necessary to facilitate the permit application process including, without limitation, establishment of fees and regulation of any work authorized under a permit issued under this Section, subject to approval of the City Council by resolution. The Public Works Director shall also have the authority to draft any policy, regulation or guideline necessary to facilitate the construction, replacement or repair of public utilities within City streets and rights-of-way, subject to approval of the City Council by resolution.

(g) The permit holder shall be responsible to restore any City property to its original condition, and shall be liable for all damage to property arising out of or resulting from the performance by the permit holder, its subcontractors, agents, representatives or designees of any work designated above. The permit holder shall be obligated to notify the Public Works Department immediately upon discovery of any damage to City property, and the permit holder shall correct and repair any damage caused by itself, its subcontractors, agents, representatives or designees, within twenty-four (24) hours of notification or knowledge of the damage or such shorter time as specified by the Public Works Department. In the event the permit holder, for any reason, does not correct or repair the damage within the specified time period, the Public Works Director reserves the right to correct and repair the damage and recover from the permit holder actual costs pursuant to Section 1-75 of this Code. Nothing under this Subsection shall preclude, prevent or waive the right of the Public Works Director from drawing against any form of security posted by the permit holder.

(h) The holder of a permit issued under this Section shall comply with CDOT Standard Specifications for Road and Bridge Construction and CDOT Standard Plans, M&S Standards, as amended.

(i) Failure to comply with the terms of this Section shall constitute a civil infraction subject to prosecution under Sections 1-74 and 1-75 of this Code. (Ord. 98-27 §1; Ord. 2014-8 §1)

Secs. 11-36—11-50. Reserved.

ARTICLE III

Public Rights-of-Way

Sec. 11-51. Removal of tree limbs, etc.

It is the duty of a property owner abutting the right-of-way of any street, highway, sidewalk or other public way within the City to remove overhanging boughs of trees located on the abutting property that endanger life or property on the public right-of-way or interfere with the use of a public right-of-way. (Ord. 97-16 §1)

Sec. 11-52. Notice to property owner.

Upon written notice sent by certified mail, the owner of real property abutting the right-of-way of any street, highway, sidewalk or other public way within the City shall trim or remove, at his or her own expense, any tree limb, shrub, vine, hedge or other plant which projects beyond the property line of such owner or over the public right-of-way. (Ord. 97-16 §1)
Sec. 11-53. Failure to comply with notice.

If an owner of real property abutting a public way fails to trim or remove a tree bough, tree limb, shrub, vine, hedge or other plant within ten (10) days of the notice provided in Section 11-52 above, the City may undertake the necessary trimming or removal, and the abutting property owner shall reimburse the City for the costs and expenses of the work performed. (Ord. 97-16 §1)

Sec. 11-54. Emergency removal.

If the Public Works Director determines that any tree bough, tree limb, shrub, vine, hedge or other plant that encroaches into a public right-of-way constitutes an immediate threat to the safety of persons or property in the public right-of-way, the City may undertake the necessary trimming or removal without prior notice to the abutting property owner, and the abutting property owner shall reimburse the City for the costs and expenses of the work performed. (Ord. 98-16 §1; Ord. 98-29 §1)

Sec. 11-55. Assessment of costs.

If the abutting property owner shall fail within thirty (30) days after billing to pay the costs and expenses of work performed by the City, such costs and expenses may be collected by the City in a civil action or assessed and filed as a lien against the property. (Ord. 97-16 §1)

Secs. 11-56—11-70. Reserved.

ARTICLE IV

Newracks

Sec. 11-71. Definitions.

As used in this Article:

Newrack means a self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display and sale of newspapers or other news periodicals.

Permittee means the person to whom a newrack permit is issued, who shall be responsible for maintenance of the newrack. (Ord. 98-16 §1; Ord. 98-29 §1)

Sec. 11-72. Permit required.

It shall be unlawful for any person to maintain or operate, on any public street or sidewalk, or in any other public way or City-owned or operated place or facility in the City, any newrack, unless the City has provided such newrack and such person has a valid permit for the newrack. (Ord. 98-16 §1; Ord. 98-29 §1)

Sec. 11-73. Application for permit.

(a) Application for a permit to use one (1) of the City-owned newracks shall be made, in writing, to the Director of Public Works upon such form as shall be provided.

(b) Each City-owned newrack shall require one (1) permit.

(c) The application shall contain the name and address of the applicant and the specific location of the City-owned newrack, and shall be signed by the applicant.

(d) If the application is approved, a permit shall be issued within seventy-two (72) hours after the application has been filed.

(e) There shall be no annual permit fee.

(f) A newrack permit shall be valid for one (1) year and shall be renewable pursuant to the procedure for original applications referred to in this Section. (Ord. 98-16 §1; Ord. 98-29 §1)
Sec. 11-74. Conditions for permit.

(a) As an express condition of the issuance or renewal of a newsrack permit, the permittee thereby agrees to indemnify and save harmless the City, its officers, directors and employees against any loss or liability or damage, including expenses and costs for bodily or personal injury, and for property damage sustained by any person as the result of the use or maintenance of the newsrack.

(b) The use of City-owned newsracks shall be conditioned upon observance of the provisions of this Article and such reasonable rules and regulations as may be established by the City. (Ord. 98-16 §1; Ord. 98-29 §1)

Sec. 11-75. Maintenance and installation.

(a) The permittee shall be responsible for all maintenance of the City-owned newsrack, and shall ensure that the newsrack complies with all applicable provisions of this Article.
(b) City-owned newsracks may be used only for the following purposes:

(1) The display and sale of newspapers or other news periodicals;

(2) Advertising the sale of the newspapers or periodicals sold therein;

(3) Publicizing charitable or community services and activities of a nonprofit nature; and

(4) Other public service purposes.

(c) City-owned newsracks shall not be used to advertise or direct attention to any business, commodity, service or activity conducted, sold or offered other than from such newsrack.

(d) Each City-owned newsrack shall be equipped with a coin return mechanism to permit a person using the machine to secure an immediate refund in the event he or she is unable to receive the publication. The City shall ensure that this mechanism is in working order when the newsrack permit is originally issued. After that time, the mechanism shall be maintained in good working order at all times by the permittee.

(e) Each City-owned newsrack shall have affixed to it, in a readily visible place so as to be seen by anyone using the newsrack, a notice setting forth the name, address and telephone number of the permittee.

(f) The permittee shall maintain the newsrack in a neat and clean condition and in good repair at all times. Specifically, each newsrack shall be serviced and maintained so that:

(1) It is free of dirt and grease;

(2) It is free of chipped, faded, peeling and cracked paint in the visible painted areas thereof;

(3) It is painted one (1) solid color, which color shall be black;

(4) It is free of rust and corrosion in the visible unpainted metal areas thereof;

(5) The clear plastic or glass parts thereof, if any, through which the publications therein are viewed are unbroken and free of cracks, dents, blemishes and discoloration;

(6) The paper or cardboard parts, or inserts thereof, are free of tears, peeling or fading; and

(7) The structural parts thereof are not broken or unduly misshapen.

(g) When the original newsrack permit is issued, the City shall issue one (1) coin box key to the permittee. The City shall maintain a master key. If a key is lost, the City may charge the permittee a reasonable fee for a replacement key. When a permit is revoked or expires, the coin box key shall be returned to the City. If the City issues a new permit for a newsrack, the City shall rekey the coin box lock or obtain a new lock for the coin box. (Ord. 98-16 §1; Ord. 98-29 §1)

Sec. 11-76. Location and placement of newsracks.

The City shall, in its discretion, place groups of City-owned newsracks at convenient public locations throughout the City. In each location, each periodical shall be entitled to a single newsrack, so that no publication is excluded from a particular location to the extent practicable as determined by the City. If more newsracks become necessary, the City will add additional newsracks. (Ord. 98-16 §1; Ord. 98-29 §1)
Sec. 11-77. Violations.

(a) Upon a determination by the Director of Public Works that any newsrack has been installed, used or maintained in violation of the provisions of this Article, a notice to correct the offending condition shall be issued to the permittee or violator.

(b) The notice shall be mailed via first class United States Mail to the permittee at the address shown on the newsrack or permit application, or the last known address of the violator, if other than a permittee.

(c) The notice shall specifically describe the offending condition and suggest actions necessary to correct the condition.

(d) Failure to properly correct the violation within seven (7) days of the date of the notice may result in any or all of the following:

   (1) The City may summarily remove the periodical from the newsrack and discard the periodical.

   (2) The City may revoke the newsrack permit.

   (3) If the violation concerns maintenance, the City may perform the required maintenance, and then charge the permittee.

   (e) The violator may, by written notice within seven (7) days of the date of the notice of violation, request an informal meeting with the Director of Public Works. Said meeting shall be held within five (5) working days from the date of the request. The appeal time referred to in Section 11-78 below shall commence and begin to run as of the date of the meeting. (Ord. 98-16 §1; Ord. 98-29 §1)

Sec. 11-78. Appeals.

(a) Any person or entity aggrieved by a finding, determination, notice or action taken under the provisions of this Article may appeal to the City Council.

(b) An appeal must be perfected within seven (7) days after receipt of notice of any protested decision or action.

(c) An appeal is perfected by filing with the City Clerk a letter of appeal briefly stating therein the basis for such appeal.

(d) A hearing shall be held on a date no more than sixty (60) days after receipt of the letter of appeal.

(e) Appellant shall be given at least ten (10) days' notice of the time and place of the hearing.

(f) At such hearing, the City Council shall give the appellant and any other interested party a reasonable opportunity to be heard. The appellant shall have the right to examine the evidence upon which the Director of Public Works relied, to cross-examine any witnesses who may have testified and to offer any evidence which may tend to show that the subject newsrack does not violate any provision of this Article.

(g) At the hearing, the burden of proof shall be upon the appellant to show that there was no evidence to support the action taken by the Director of Public Works.

(h) At the conclusion of the hearing, the City Council shall make a final determination.

(i) The perfection of any appeal to the City Council shall stay the enforcement of this Article until the City Council makes its final determination, unless the newsrack presents a clear
and present danger of imminent personal injury or property damage. (Ord. 98-16 §1; Ord. 98-29 §1)

Sec. 11-79. Emergency.

Nothing contained in this Article shall be interpreted to limit or impair the exercise by the City of its police power, in the event of an emergency, to remove or relocate any newsrack, or to remove and dispose of the contents of any newsrack. (Ord. 98-16 §1; Ord. 98-29 §1)

Sec. 11-80. Abandonment.

If a City-owned newsrack remains empty for a period of thirty (30) continuous days, the newsrack permit shall be deemed abandoned, and the City may issue a new permit for that newsrack. (Ord. 98-16 §1; Ord. 98-29 §1)

Sec. 11-81. Compliance.

Within thirty (30) days of the City’s installation of City-owned newsracks, all distributors of periodicals in the City which currently have newsracks in the public right-of-way or which project onto, into or over any part of a public right-of-way, shall remove those privately owned newsracks and comply with the terms of this Article. (Ord. 98-16 §1; Ord. 98-29 §1)

Secs. 11-82—11-100. Reserved.

ARTICLE V
Assembly Permits

Sec. 11-101. Policy.

It is the policy of the City that unnecessary restrictions not be placed upon public assemblies which have as their purpose the communication of ideas to the public at large. (Ord. 2007-4 §3)

Sec. 11-102. Scope.

Assemblies may be held on public property, provided that a permit has been issued in accordance with this Article and when the conduct of the assemblies is not likely to damage public property, beyond normal wear and tear, or unnecessarily interfere with the use of public property by others. (Ord. 2007-4 §3)

Sec. 11-103. Definition.

For purposes of this Article, the term assembly shall mean and include demonstrating, picketing, speech making, marching, holding of vigils and all other like forms of conduct which include the communication or expression of ideas, views or grievances, engaged in by one (1) or more persons, the conduct of which has the effect, purpose or propensity to draw a crowd or onlookers. (Ord. 2007-4 §3)

Sec. 11-104. Permits.

Application for an assembly permit shall be made to the City Clerk at least five (5) business days prior to the proposed date of assembly. As a condition of an assembly permit, the City Clerk may require proof of liability insurance coverage in an amount to be determined by the City Clerk. An assembly permit shall be approved unless denied within five (5) working days from the date of application. Grounds for denial may include:

(1) The time and place requested has already been permitted or reserved for other activities, in which case, an alternate time or location may be suggested, if available;

(2) The assembly will present a clear and present danger to the public's welfare, safety or health;

(3) The proposed assembly is of such a nature, duration or time that the particular
location requested cannot accommodate the assembly, in which case an alternate location may be suggested, if available;

(4) The application contains intentionally false or materially misleading information;

(5) The application proposes activities which would be contrary to provisions of rules and regulations of a general nature which are necessary for the preservation of public property or the welfare, health or safety of the residents of the City;

(6) Failure to provide proof of adequate insurance. The applicant may apply to the City Clerk for a waiver insurance where insurance is not available or if procurement of the insurance would be so financially burdensome that it would effectively preclude the applicant from taking part in the proposed assembly;

(7) Products or services will be commercially sold (not including direct fundraising by the sponsor of the assembly); and

(8) Signs, other than signs relating to the purpose of the assembly, will be displayed and/or signs identifying a product or service which is commercially available at a location other than the assembly will be displayed.

Sec. 11-105. Denial of permit.

Any applicant who is denied a permit shall be provided an opportunity to appeal such denial within fifteen (15) days of the denial. Upon filing an appeal, the applicant shall be provided the opportunity for an informal hearing to be heard by the Board of Aldermen at the next regularly scheduled meeting following the filing of the appeal. A complete record shall be kept of the hearing, and the Board of Aldermen shall issue a written determination immediately following the informal hearing. (Ord. 2007-4 §3)

Sec. 11-106. Review of appeal.

The decision of the Board of Aldermen shall be final and subject to review pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. (Ord. 2007-4 §3)

Sec. 11-107. Numerical limitations.

For the purpose of protecting the health, safety and welfare of the public, the City Clerk may limit the number of individuals who shall be permitted to participate in an assembly in any park or park area at any one (1) time and shall set forth the basis and factors for each such limitation so established. (Ord. 2007-4 §3)

Secs. 11-108—11-120. Reserved.

ARTICLE VI

City's Use of Public Facilities in City Rights-of-Ways

Sec. 11-121. Findings.

The City Council adopts this Article based upon the following findings of fact:

(1) The City finds that the use of streets, alleys and other public places by utilities and providers of similar services within the City confers a public benefit on private sector investor-owned entities.

(2) The City further finds that some of these entities hold franchises from the City and pay certain compensation to the City, which in turn is often directly passed through by the private entity to its customers.

(3) The City also finds that, because the use of public property provides a direct and continuing benefit to private entities, it is both reasonable and appropriate, and an exercise of the City's general police power,
those who utilize public property should contribute to the City's ability to accomplish its public interest goals through the use of facilities located on public property in a manner that is not inconsistent with the facilities' primary use.

(4) The City further finds that it is the intent of this Article to create a process by which, as additional consideration for the use of the City's streets, alleys and other public places as may be granted by the City, utilities and providers of similar services may also be required to make their facilities in the public property available for City use to the extent that such use does not create a material negative impact on a private entity's facilities or operations, and such use can be accomplished in a manner that is protective of public health and safety. (Ord. 2012-19 §1)

Sec. 11-122. Use of public places by utilities and similarly situated service providers.

Every utility and every provider of similar service within the City, regardless of whether it holds a franchise from the City, may be required by the City to permit joint use of its facilities located in the streets, alleys or other public places in the City, as such may be reasonably practicable. Examples of such joint use may include, but are not limited to, attachment of flags, banners or similar signs announcing public events, holiday lights and other decorative attachments, pedestrian or other traffic-related safety signs, flashing crosswalk lights, flower pots and baskets and other similar attachments. Such use of said facilities by the City shall not create a material negative impact on a private entity's facilities or operations, and such use may only be considered when it can be accomplished, at the City's discretion, in a manner that is protective of public health and safety. Nothing contained herein shall limit the City's ability to enter into any other type of joint use agreement with utility and other service providers owning facilities located in City streets, alleys or other public places. (Ord. 2012-19 §1)

Sec. 11-123. Standards.

The City Manager may adopt standards for use by the City of a private entity's facilities in City streets, alleys and other public places and shall apply such standards to all similarly situated facilities; provided, however, that such standards may be modified where unusual conditions indicate that such a modification will allow for an adequate and safe utilization of such facilities. (Ord. 2012-19 §1)

Sec. 11-124. Enforcement.

(a) If the utility or other service provider that is the owner of the facilities in the streets, alleys or other public places objects to any proposed City use of such facilities, the City shall be permitted to undertake a study to address the concerns raised by the facilities' owner. The owner of the facilities shall cooperate in providing the City any information reasonably needed to study and respond to the facilities' owner's objections. For purposes of this Section, an owner shall be deemed to have failed to cooperate if it does not provide the City with any information reasonably requested within seven (7) calendar days of a written request.

(b) If the City provides information to the utility or other service provider which reasonably demonstrates that its proposed use of the facility will not cause a material negative impact on the utility or other service provider's facilities or operations and will not negatively impact public health and safety, the facility owner shall allow the City's proposed use, subject to any conditions reasonably necessary to ensure that the use will not cause the negative impacts described herein. Failure to make such facilities available for City use as provided herein shall be a violation of this Article and may be prosecuted pursuant to Section 1-73 of this Code.
(c) It shall be unlawful for any person, including any representative or contractor of a utility or other service provider, to remove flags, banners or similar signs announcing public events, holiday lights and other decorative attachments, pedestrian or other traffic-related safety signs, flashing crosswalk lights, flower pots and baskets and other similar attachments from facilities located in the streets, alleys or other public places in the City without receiving advance written permission from the City Manager.

(d) In addition to addressing violations of this Article under Section 1-73 of this Code, if a facility owner fails to make its facilities available after the City has provided the information described in Subsections (a) and (b) above, the City Manager is authorized to withhold issuance of a building permit or any other required permit sought by the facilities' owner until arrangements have been made to the City's satisfaction that the requested City use of the facilities in the streets, alleys or other public places is being provided. (Ord. 2012-19 §1)

Secs. 11-125—11-140. Reserved.
CHAPTER 13

Municipal Utilities

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Sec. 13-2  Powers of the Water Board
Sec. 13-3  Requiring hookup to municipal system

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Sec. 13-22  Water tap fees
Sec. 13-23  Water usage rates
Sec. 13-24  Billing of service charges
Sec. 13-25  Notice prior to disconnection
Sec. 13-26  Disconnections
Sec. 13-27  Lien
Sec. 13-28  Abandonment of water tap system development fee
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ARTICLE I

Water Regulations

Sec. 13-1. Establishment of City Water Board.

There is created and established a Water Board of the City. The Water Board shall consist of the Public Works Director, Water System Coordinator and the City Manager. (Ord. 2010-2 §1)

Sec. 13-2. Powers of the Water Board.

The Water Board shall have the power to recommend adoption of rules and regulations for the management, maintenance, care and operation of the City's water system subject to approval by the Board of Aldermen. The Water Board shall also have the power to establish water charges and user categories subject to approval by the Board of Aldermen. The Water Board shall have approval to authorize changes in contracts for construction or services subject to approval by the Board of Aldermen. The Water Board shall have the power to accept or reject capital water projects constructed for the City, subject to approval by the Board of Aldermen. Furthermore, the Water Board shall have authority to make emergency expenditures for the maintenance and repair of the water system in an amount not to exceed the City Manager's spending authority, as the same may be amended from time to time. However, as soon as practical thereafter, the Water Board shall advise the Board of Aldermen of the emergency and the impact on the budget and water system. (Ord. 2010-2 §1)

Sec. 13-3. Requiring hookup to municipal system.

(a) All occupied buildings located within the municipal limits of the City shall be required to connect to the City's water system. All new connections to the City's water system must also install a backflow prevention device, surge arrestor and a water meter. All connections to the City's water system and the installation of backflow prevention devices, surge arrestors and water meters shall be in accordance with the Water Board's rules and regulations.

(b) The City is responsible for maintenance and repair of its water system. The City's water system is defined as all facilities up to the point of the edge of the public right-of-way or curb stop and the beginning of the individual service connection that is located on private property beyond the curb stop. Individual water tap owners are responsible for installation, maintenance and repair of all facilities beyond the curb stop or public right-of-way.

(c) Any other water source shall require the approval of the Water Board. Under no circumstances will a cross-connection to the City's water system be allowed.

(d) A backflow prevention device, in accordance with the Colorado Primary Drinking Water Regulations, Article 12, shall be installed in every residence that receives a building permit for the rehabilitation of the water system or heating system.

(e) It is prohibited for any person other than an authorized representative of the City to operate main line valves, fire hydrants or curb stops.

(f) Facilities with fire sprinklers may be required to test their systems. These tests shall be scheduled with the Water Department and Fire Department a minimum of forty-eight (48) hours in advance. Failure to provide advance notice of system testing of fire sprinkler systems may result in penalties, including but not limited to the revocation of a City contractor registration for the contractor and the assessment of any damage to the distribution system caused by the unauthorized test. (Ord. 2010-2 §1; Ord. 2017-13 §1)
ARTICLE II
Water Rates

Sec. 13-21. Meter and surge arrestor requirements.

(a) All water users, except residential water users as defined in this Section, must install a surge arrestor and a water meter in accordance with the Water Board’s rules and regulations. Residential water users under this Section are defined as any building that is located within the Historical Residential, Rural Residential or Environmental Character Preservation District of the City and connected to a City waterline on or before October 1, 2000, and the building is used in a manner that conforms with the uses allowed within these residential districts, whether as a permitted use, a permitted accessory use, a special review use or a legal nonconforming use recognized by the City.

(b) All installations of backflow devices, surge arrestors and water meters shall be in accordance with this Code and with the Water Board’s rules and regulations and must be approved by the City.

(c) If a water user is violating this Article by failing to install a water meter, the City shall estimate the water user’s monthly consumption of water. The estimate shall be based on the number of gallons consumed per day per square foot of the highest water user with a similar use of his or her property. The water user shall be responsible for paying the estimated water use. However, if the water user can provide documentation which establishes the amount of water actually consumed, then the water user shall be responsible for that amount.

(d) The Water Board shall notify the water user by certified mail that he or she has forty-five (45) days from the date of the letter to install a backflow device, surge arrestor and a water meter. If any of these items are not installed within forty-five (45) days, water service to the premises shall be turned off and will not be reinstated until the water user installs these devices and complies with the other requirements of the City.

(e) Any existing facility, not including residential water users, that has a water meter, but does not have a surge arrestor shall install a surge arrestor as part of any facility remodel or activity which requires a building permit. (Ord. 2010-2 §1)


(a) All new purchasers of water taps for single-family residential use must pay the following fees. Single-family residential use shall consist of single-family dwellings, duplex dwellings and townhomes wherein a single family will occupy such dwelling unit, and one (1) water tap and meter shall be required for each dwelling unit. Any structure that requires a tap larger than (2) two inches will be considered nonresidential for purposes of this Section.

Single-Family Water Tap Fee ($15,000/sq.-in.)

<table>
<thead>
<tr>
<th>Tap Size (inches)</th>
<th>Meter Fee</th>
<th>Tap Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.75</td>
<td>$600</td>
<td>$6,627</td>
</tr>
<tr>
<td>1.0</td>
<td>1,300</td>
<td>11,781</td>
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<tr>
<td>1.5</td>
<td>2,100</td>
<td>26,507</td>
</tr>
<tr>
<td>2.0</td>
<td>2,600</td>
<td>47,124</td>
</tr>
</tbody>
</table>

(b) All new purchasers of water taps for multi-family residential use must pay the following fees. Multi-family residential use shall consist of apartment and condominium structures comprised of three (3) or more individual dwelling units wherein a single family will occupy individual units. A common water tap and surge arrestor and meter will be required for each structure. Any structure that requires a tap larger than three (3) inches will be considered nonresidential for purposes of this Section.
Multi-Family Water Tap Fee ($30,000/sq.-in.)

<table>
<thead>
<tr>
<th>Tap Size (inches)</th>
<th>Meter Fee ($</th>
<th>Tap Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.75</td>
<td>600</td>
<td>13,254</td>
</tr>
<tr>
<td>1.0</td>
<td>1,300</td>
<td>23,562</td>
</tr>
<tr>
<td>1.5</td>
<td>2,100</td>
<td>53,014</td>
</tr>
<tr>
<td>2.0</td>
<td>2,600</td>
<td>94,248</td>
</tr>
<tr>
<td>3.0</td>
<td>3,800</td>
<td>212,057</td>
</tr>
</tbody>
</table>

New purchasers of water taps for nonresidential use must pay the following fees:

Water Tap Fee ($30,000/sq.-in.)

<table>
<thead>
<tr>
<th>Tap Size (inches)</th>
<th>Meter Fee ($</th>
<th>Tap Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.75</td>
<td>600</td>
<td>13,254</td>
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<td>1,300</td>
<td>23,562</td>
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</tr>
<tr>
<td>8.0</td>
<td>12,800</td>
<td>1,507,963</td>
</tr>
<tr>
<td>10.0</td>
<td>at cost</td>
<td>2,356,192</td>
</tr>
</tbody>
</table>

A purchaser of a residential water tap may convert said tap to a nonresidential water tap by payment of an additional fee, which fee shall be equal to the fee difference between a residential water tap and an equivalent-sized nonresidential water tap. Purchasers of nonresidential water taps and meters will not receive a credit for conversion to a residential water tap. The City will only sell water taps in the sizes specified herein, and all fees must be paid with certified funds.

(c) All tap purchasers shall pay at least the minimum fees shown for the 0.75-inch tap. Additionally, all tap purchasers must install a backflow device, surge arrestor and meter according to the rules and regulations of the Water Board.

(d) If a new commercial structure is erected or an existing commercial structure undergoes an addition, enlargement, improvement or change of use, the water tap size must be capable of servicing the demand as specified by the Plumbing Code as adopted by the City, and there must be a backflow device, surge arrestor and meter installed according to the rules and regulations of the Water Board. It is prohibited to interconnect any two (2) or more taps in any situation. If the permit holder replaces the existing tap and service line, then a credit shall be given for the existing tap as follows: The amount of credit will equal the amount of the tap fee specified in Subsection (b) above at the time of the credit for any tap purchased prior to June 1, 1997. The amount of the credit for any tap purchased after June 1, 1997, will not exceed the amount of the tap fee paid for the original tap. However, the credit allowed for the replacement tap shall not exceed the value of the tap to be purchased.

(e) The amount paid to the City for a water tap after August 25, 1992, shall not be refundable.

(f) Any purchaser of a residential water tap, the certificate of which was obtained after June 1, 1996, may petition the City Water Board for a rebate of any water tap fees paid in excess of those fees listed under Subsection (a) above.

(g) The City will only sell a water tap upon the issuance of a building permit for a new structure or an existing structure that undergoes an addition, enlargement or a change of use subject to the requirements specified in Subsection (d) above. Any water tap that is sold by the City shall be considered real property and shall attach and run with the real property that is the subject of the building permit. (Ord. 2010-2 §1)

Sec. 13-23. Water usage rates.

Water usage rates shall be established by the City Council by resolution following a public hearing. (Ord. 2010-2 §1)

(a) Charges for water services for both metered and nonmetered accounts shall be billed monthly.

(b) A bill for water service shall become late two (2) days before the next billing of the affected account. Once the account is late, a late charge of twenty-five dollars ($25.00) will be added to residential accounts, and a late charge of one hundred dollars ($100.00) will be added to nonresidential accounts. If a user is delinquent more than once in a twelve-month period, the late charge will be increased. The adjusted late charge will equal the late charge (i.e., $25.00 or $100.00) multiplied by the number of times the account has been delinquent in the last twelve (12) months.

(c) Interest charges shall be applied to all delinquent balances, including principal, accrued interest and late charges. The interest rate shall be established annually by the Water Board.

(d) If the account is delinquent on two (2) consecutive bills and the customer has failed to make payment arrangements pursuant to Subsection (b) above, water service is subject to disconnection.

(e) The Finance Department is authorized to make payment arrangements with any customer whose account is delinquent, in accordance with policies promulgated by the Water Board. If the payment arrangements are not complied with, the account may be subject to disconnection without further notice. The Finance Department may also write off amounts up to sixty dollars ($60.00) which are not economically collectible. (Ord. 2010-2 §1)

Sec. 13-25. Notice prior to disconnection.

Prior to disconnection, the City shall provide written notice at least fifteen (15) days prior to disconnection of service. Such notice shall be both mailed to the customer and posted on the premises for which the charge reflected on the bill is due. The fifteen-day period shall commence after posting of the notice. A charge of sixty dollars ($60.00) shall be added to the account for the cost of mailing and posting the notice. The written notice shall also include a provision advising the customer of the right to an administrative hearing before the Finance Department prior to the disconnection of water services. In the event the disconnection of water services is due to nonpayment of a sewer bill to the Black Hawk-Central City Sanitation District, the administrative hearing shall be held before the Water Board prior to the disconnection of the water services. The hearing must be held within fifteen (15) days after the notice is posted, and the only issue at the hearing is whether the delinquency exists, the accuracy of the delinquent bills or whether disconnection of water services will aggravate an existing specific medical condition or create a medical emergency. (Ord. 2010-2 §1)

Sec. 13-26. Disconnections.

(a) Water service shall not be disconnected for delinquency until reviewed and approved by the Water Board. The Water Board shall consider whether a delinquency exists, the accuracy of the delinquent bills or whether disconnection of water services will aggravate an existing specific medical condition or create a medical emergency.

(b) Notwithstanding the provisions of Subsection (a) above, water service is subject to immediate disconnection whenever the customer files a petition for protection under the Bankruptcy Reform Act of 1978, as amended, and neither the trustee in bankruptcy nor the customer furnishes adequate assurance of payment within twenty (20) days after the date of the order for relief. The adequate assurances must be in the form of a deposit or other security for service after such date as provided by 11 U.S.C. § 366, as amended. Upon receipt of the order
for relief, the City shall give the trustee in bankruptcy and customer twenty (20) days' written notice before actually disconnecting water service. The written notice shall contain a provision advising the trustee in bankruptcy and the customer of the amount of the deposit or other security that must be provided to the City before the expiration of the twenty-day notice; provided, however, that water service shall not be disconnected until such action is approved by the Water Board.

(c) Water service disconnected pursuant to this Section shall not be reconnected until the customer pays the delinquent bill or makes payment arrangements accepted by the Finance Department. A reconnection charge of two thousand five hundred dollars ($2,500.00) shall be added to the account for costs related to service reconnection. Prior to reconnection, the property must be inspected by the City's building official and verification made that the property is adequately heated and the system is adequately protected. All backflow devices in the property must be tested and certified by the owner, and certificates must be provided to the Water Department prior to the water being turned on.

(d) Water service may be disconnected for the nonpayment of sewer charges pursuant to an IGA with Black Hawk-Central City Sanitation District.

(e) If a water tap owner fails to repair and maintain all facilities beyond the City water system as defined in Subsection 13-3(b) of this Chapter and within his or her property boundaries, the water service is subject to disconnection.

(1) The City shall provide written notice to the owner, occupant or tenant at least ten (10) days prior to disconnection of service, unless the City determines that an emergency exists requiring immediate disconnection.

Such notice shall be both mailed to the customer and posted on the premises. The ten-day period shall commence after posting. A charge of sixty dollars ($60.00) shall be added to the water tap owner's account for the cost of posting and mailing. The written notice shall advise the customer of a right to administrative hearing before the Water Board prior to disconnection of the water service. The hearing must be held within ten (10) days after notice is posted. The Water Board shall consider whether repairs are necessary, the extent of the repairs necessary and whether disconnection of water service will aggravate an existing specific medical condition or create a medical emergency.

(2) Water service disconnected pursuant to this Section shall not be reconnected until the water tap owner satisfactorily repairs the facilities, in compliance with all applicable Water Board regulations, or makes arrangements to repair the facilities that are accepted by the Water Board. A reconnection charge of two thousand five hundred dollars ($2,500.00) shall be added to the account for costs related to service reconnection. All inspections and certifications as outlined in Subsection (c) above must be completed prior to reconnection.

(3) Individual water tap owners who fail to repair and maintain their facilities may also be subject to the enforcement provisions of Article V of this Chapter. (Ord. 2010-2 §1)

Sec. 13-27. Lien.

(a) The owner of any property which receives water services shall be liable for the payment of all the proper charges if the same has not been paid by a tenant or lessee. The City shall have as security for collection of all water charges, a lien upon the real property served. The lien shall become effective upon supplying
of water services and other associated rates, penalties and charges. The lien shall not be discharged until payment of all water charges. In order to preserve any lien created by operation of this Chapter, the City shall file for record a lien statement in the office of the County Clerk and Recorder, at any time before the expiration of five (5) months after the day in which a bill for utilities charges becomes delinquent as defined by this Section. All liens created and perfected by virtue of this Chapter shall relate back to and take effect as of the time that water services are first provided to or billed to the real property. Such lien shall be enforceable against any person acquiring an interest in such real property. Liens which are created by this Chapter, but not perfected, shall be enforceable against any person with an interest in the real property subject to the lien that has notice of such lien. In the event the lien provided by this Section is not discharged by payment, the Finance Department shall report the delinquency to the Water Board, and the Water Board shall be authorized to collect the delinquent charges, rates and penalties by certification of such delinquency with the County Treasurer and collected as all other taxes as authorized by Sections 31-20-101 through 31-20-107, C.R.S.

(b) Any customer that does not occupy the property to which water services are provided, which property is occupied by persons other than the customer or completely vacated, may request to have water usage services disconnected or terminated from the property by signing and depositing a "Request for Termination of Water Services and Release" with the Finance Department. Any such customer must continue to pay the mandatory minimum water fees required by this Article, as the same may be amended from time to time. This Section shall not apply to a customer who requests the temporary disconnection of water services from the property for the purpose of repairing the water system maintained on the property. (Ord. 2010-2 §1)

**See. 13-28. Abandonment of water tap system development fee.**

In addition to the remedies for nonpayment provided by this Article, any property for which fees for water services have not been paid for a period of at least one (1) year shall be deemed to have abandoned the City's water system development fees originally paid pursuant to Section 13-29 below. The repayment of the water system development fee shall be in addition to any other fees required to be charged in order to reconnect any property to the City system. (Ord. 2010-2 §1)

**Sec. 13-29. Water system development fees.**

(a) All new uses or expanded uses (expanded uses do not include residential) that have not been issued a temporary certificate of occupancy shall pay the following water system development fee:

<table>
<thead>
<tr>
<th>Type of Use</th>
<th>Cost per Sq. Ft. *</th>
<th>Cost per Room</th>
<th>Cost per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nonresidential, in gaming district</td>
<td>$16.00</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Hotel</td>
<td>N/A</td>
<td>$900.00</td>
<td>N/A</td>
</tr>
<tr>
<td>Nonresidential, outside of gaming district</td>
<td>$8.00</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

* Square footage shall be measured in the manner provided in Paragraph 16-264(a)(3) of this Code.

(b) The water system development fee shall be paid in certified funds by the property owner for the property that is the subject of the application prior to, but not later than, the time when the water tap must be purchased under this Chapter.

(c) The purpose of the water system development fee is to reserve capacity in the water supply generated by future water system
improvements. However, the payment of the water system development fee in no way guarantees when the water will be available for delivery. The payment of the water system development fee does not vest any right to receive a water tap under this Chapter.

(d) No water tap shall be sold by the City which will exceed the amount of capacity that is reserved and is available under the current system capacities.

(e) The water system development fee shall not be refundable. However, the water system development fee shall be a benefit running with the real property that is the subject of the application and shall be transferable to the new owner of the same property.

(f) For the purposes of this Chapter, the following water use rates are used:

(1) Nonresidential: One-half (0.5) gallon per day per square foot.

(2) Hotel rooms: Eighty (80) gallons per day per room (for purposes of this computation only).

(3) Residential: One hundred eighty-five (185) gallons per day per unit. (Ord. 2010-2 §1)

Sec. 13-30. Surcharge on water rates, taps and system development fees.

(a) Water users located outside of the City in unincorporated areas may be served by the City water system as determined by the City at its sole discretion. By providing water service outside of the City, the City is in no way holding itself out as the provider for any area located outside of the City.

(b) All water users located outside of the City in unincorporated areas which are approved for service by the City in the exercise of its sole discretion shall pay the water rates, tap fees and system development fees as provided in this Chapter, plus a fifty-percent surcharge on such rates, tap fees and system development fees. All water users located outside of the City in unincorporated areas shall also reimburse the City for the cost to extend water service to such water user in an amount determined by the City in the exercise of its sole discretion.

(c) Water users located outside of the City which were approved for service by the City as provided in this Section shall be disconnected from the City water system upon the annexation of the water user into an incorporated area other than the City of Black Hawk. The City shall not honor any request for a refund of any rates or fees due to the disconnection from the City water system.

(d) The City shall not connect water users located outside of the City in unincorporated areas to the City water system until such time as the City and the water user enter into a written agreement whereby the water user consents to the requirements contained in this Section and any and all other requirements that the City in its sole discretion may require. The written agreement described in this Subsection shall be recorded against the real property that is connected to the City water system and shall be a covenant running with such real property and shall be binding upon the water user and successors in interest to the real property that is connected to the City water system.

(e) All water users located within the City shall reimburse the City for the cost to extend water service to such water user in an amount determined by the City in the exercise of its sole discretion. (Ord. 2010-2 §1)

Sec. 13-31. Reservation of capacity.

The City currently has available water capacity. In order to encourage residential and commercial development in areas that are not
zoned gaming, the City will reserve twenty-five thousand (25,000) gpd of this available capacity for commercial development in areas located outside of the gaming district. (Ord. 2010-2 §1)

Sec. 13-32. Violations and penalty.

(a) It shall be unlawful for any person to knowingly connect a residential or nonresidential structure into the City's water system without paying for and installing a water tap, backflow prevention device, meter and, if required, a surge arrestor pursuant to Section 13-22 of this Article.

(b) It shall be unlawful for any person to convert to nonresidential use any residential water tap and meter without paying the conversion fee provided under Section 13-22 of this Article.

(c) It shall be unlawful for any person to knowingly connect to the City water system, including but not limited to fire hydrants, without first obtaining a permit.

(d) It shall be unlawful for any person to tamper with the City water system as defined in Subsection 13-3(b) of this Chapter. For purposes of this Subsection, tampering with the City water system includes, but is not limited to, the unauthorized access to main line valves, fire hydrants or curb stops and the testing of a fire sprinkler system without advance notice to the City.

(e) Failure to comply with the terms of this Section shall constitute a criminal violation. Any person who is found guilty of, or pleads nolo contendere to, any provision under this Section shall be subject to a penalty as set forth in Section 1-73 of this Code. For each day, or portion thereof, during which any violation continues, a person may be cited for a separate offense. The penalties specified in this Section shall be cumulative, and nothing shall be construed as either prohibiting or limiting the City from pursuing such other remedies or penalties in an action at law or equity.

(f) The City may order the immediate disconnection of any unlawful water connection notwithstanding the provisions of Section 13-26 of this Article. (Ord. 2010-2 §1)

Secs. 13-33—13-40. Reserved.

ARTICLE III

Water Conservation


The Board of Aldermen determines that the promotion and development of certain water conservation measures will further short- and long-term goals relative to this valuable natural resource. The available data indicates that the City, its inhabitants and its visitors will benefit from the adoption of these conservation measures. Moreover, such measures will further statewide goals regarding water conservation and will accordingly benefit all residents of the State. In order to accommodate the ongoing economic revival of the City and the resulting increase in water consumption within the City, as well as to ensure the continued viability of the City's water system, water conservation measures are necessary and desirable. (Ord. 2010-2 §1)

Sec. 13-42. Meter and surge arrestor requirements for residential and commercial users.

(a) Residential users. Certain residential users are required to install a meter pursuant to Section 13-21 of this Chapter. For nonmetered residential users not required by Section 13-21
to install a meter, the City shall adopt a resolution providing incentives for such residential users to install meters, including the possibility of billing incentives and the City bearing the cost of the meter and installation.

(b) Commercial users. Certain commercial users are required to install a surge arrester and meter pursuant to Section 13-21 of this Chapter. For nonmetered commercial users not required by Section 13-21 to install a meter, the City may adopt a resolution providing incentives for such commercial users to install surge arrestors and meters, including the possibility of billing incentives. (Ord. 2010-2 §1)

Sec. 13-43. Required plumbing fixtures for new residential and commercial buildings.

All interior plumbing in new buildings and replacement of plumbing in existing buildings shall meet the following requirements:

(1) Toilets and urinals. All toilets shall be designed to not exceed a flow rate of one and six-tenths (1.6) gallons per flush. All urinals shall not exceed one (1) gallon per flush. The use of automatic time flush devices is prohibited.

(2) Shower heads. Shower heads shall not exceed a flow rate of two and one-half (2.5) gallons per minute.

(3) Faucets. Lavatory, kitchen and service faucets shall not exceed a flow rate of two and two-tenths (2.2) gallons per minute. All commercial lavatories shall be equipped with spring-loaded faucets that close when not in use or faucets equipped with metering valves that close automatically after delivering a maximum of twenty-five hundredths (0.25) gallon, except for required handicapped facilities which may be equipped with faucets designed for the handicapped. Restaurant kitchen faucets and safety showers shall be exempted from the above flow restrictions.

(4) Ice machines. All commercial ice making machines installed for use after the effective date of the ordinance codified herein shall be air-cooled rather than water-cooled machines.

(5) Commercial dishwasher machines. All commercial dishwashers installed after the effective date of the ordinance codified herein shall be water-saving commercial dishwashers, as defined by the industry.

(6) Surge arrestors. All commercial surge arrestors installed after the effective date of this ordinance shall be vertical style, flanged, air-charged units as defined in the City of Black Hawk Water Standards and Specifications. (Ord. 2010-2 §1)

Sec. 13-44. Landscaping.

All landscaping in the City undertaken after the effective date of the ordinance codified herein shall adhere to the water conservation principles and guidelines established in the Architectural Design Review Guidelines. (Ord. 2010-2 §1)

Sec. 13-45. Reserved.

Sec. 13-46. Audits.

(a) City-owned buildings. The City shall administer audits for all City-owned buildings to identify leaks and determine opportunities for reducing water waste and water usage and to inform maintenance personnel of water-saving practices. When water utilization can be reduced through the installation of water-saving plumbing fixtures discussed in Section 13-43 of this Article, such plumbing fixtures shall be installed in all City-owned buildings.
(b) Residential, industrial and commercial buildings and properties.

(1) The City shall conduct audits as requested on residential, commercial and industrial properties. The City shall additionally provide water customers information on water-saving practices and available hardware to improve both indoor and outdoor water efficiencies.

(2) As an incentive to encourage the performance of an audit and the installation of water-saving hardware, the City shall consider adopting a resolution to provide incentives for water users to undergo an audit and install water-saving hardware. (Ord. 2010-2 §1)

Sec. 13-47. Leak detection audit.

The City shall perform a leak detection audit on the water system on an annual basis to determine the presence of any leaks in the water system. In performing the annual leak detection audit, the City shall perform leak detection tests on all sections of pipe within the water system and shall repair as soon as practicable all identified leaks, including leaks in water meters and valves. All costs incurred in performing the leak detection audit and in making any necessary repairs shall be borne by the City. (Ord. 2010-2 §1)


If, upon inspection by the Water Board, there is found to be a waste of water by any user of the City's water supply, such waste of water shall be discontinued at the Water Board's direction. If such waste of water is not discontinued within forty-eight (48) hours of official notification from the Water Board, water service shall be terminated. Official notification shall be through certified mail and/or by personal issuance to the water user. In a termination situation, service shall be turned on only after the Water Board has reviewed the violation and has determined that the violation has been rectified. (Ord. 2010-2 §1)


In the event of a conflict between this Article and the provisions contained in the Plumbing Code, as adopted by the City in Chapter 18 of this Code, the more restrictive provision shall apply. (Ord. 2010-2 §1)

Secs. 13-50—13-60. Reserved.

ARTICLE IV
Watershed Protection District

Sec. 13-61. Authority.

This Article is adopted under the authority granted to Colorado municipalities at Section 31-15-707(1)(b), C.R.S., for the purpose of maintaining and protecting the City's water sources from injury and the water from pollution. (Ord. 86-1 §1)

Sec. 13-62. Watershed protection district established.

There is hereby established the "Black Hawk Watershed Protection District", which is hereby defined as that territory within the County of Gilpin, the County of Clear Creek, and State of Colorado lying within a five-mile radius above the point or points at which the City obtains its municipal water supply from natural streams or from groundwater aquifers. Said District is more particularly described in the map attached hereto as Appendix A and incorporated herein by this reference.
(Ord. 86-1 §2; Ord. 94-1 §1; Ord. 2018-17 §1)
Sec. 13-63. Polluting water supply unlawful.

It shall be unlawful for any person, firm or corporation to engage in any activities within the City of Black Hawk Watershed Protection District, if such activities have the effect of causing the quality or quantity of the City water supply to deteriorate to the point where there is a potential threat to the health, safety and welfare of the citizens of the City of Black Hawk, including, but not limited to, the following activities:

1. Excavating, grading, filling or surfacing.
2. Altering water drainage courses.
3. Conducting surface and/or subsurface mining activities.
4. Road construction or improvements.
5. Constructing or installing an onsite sewer disposal system.
6. Removing vegetation on more than one acre.
7. Oil and gas drilling operations.
8. Using, handling storing or transmitting toxic or hazardous substances, including, but not limited to, radioactive materials.
9. Using, handling, storing, or transporting flammable or explosive materials, except for domestic purposes or within vehicular fuel storage tanks.
10. Allowing pollution and run-off into the water supply which has the effect or potential of altering the physical, chemical, biological or radiological integrity of the water.
11. Having, keeping, or maintaining any buildings, privy, pen, yard or corral for stock animals within one thousand (1,000) feet of the banks of streams.
12. Bathing or allowing any stock animals to bathe in streams. (Ord. 86-1 §3; Ord. 88-3 §1; Ord. 2018-17 §2)

Sec. 13-64. Statement of intent.

It is not the intent of the Board of Aldermen to exercise any extraterritorial land use planning, zoning or in any way invade the province of the County Commissioners of any interested county with respect to land use and zoning requirements. The only concern of the City is to protect the quality of its water supply. (Ord. 86-1 §4)

Sec. 13-65. Identification of water quality impacts.

The City of Black Hawk and the County of Gilpin have formulated an intergovernmental agreement, Appendix (included as part of this document) to identify, notify and implement the water quality intent of this ordinance. (Ord. 86-1 §5; Ord. 2018-17 §3)

Sec. 13-66. Inspection.

(a) Whenever it is necessary to make an inspection to enforce any provision of this ordinance, the City Manager or his designee may go upon any land located within the Black Hawk Watershed Protection District at any reasonable time to inspect the same or to perform any duty imposed hereunder; provided that if such land or premises is occupied, such inspector shall first present proper credentials and request entry; and if such land or premises is unoccupied, he shall first make a reasonable effort to locate the owner or occupant or other person or persons having charge or control over the land or premises, and upon locating the owner, occupant or other person or persons shall present proper credentials and request en-
try. If entry is refused, such person shall give the owner or occupant, or if the owner or occupant cannot be located after reasonable effort, he shall leave at the building or premises, a twenty-four (24) hours' written notice of intention to inspect. The notice given to the owner or occupant or left on the premises as aforesaid shall state that the property owner has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by the Municipal Judge of the City, or judge of any other court having jurisdiction.

(b) After the expiration of the twenty-four-hour period from the giving or leaving of such notice, the authorized inspector may appear before the Municipal Judge of the municipal court, or judge of any other court having jurisdiction, and upon a showing of probable cause, shall obtain a search warrant entitling him to enter the land or the premises. Upon presentation of the search warrant and proper credentials, or possession of same in the case of unoccupied land or premises, the person may enter into the premises or upon the land using such reasonable force as may be necessary to gain entry therein.

(1) For purposes of this subsection, a determination of "probable cause" will be based upon reasonableness, and if a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a search warrant. The person applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the particular land or premises at issue in order to obtain a search warrant. It is unlawful for any owner or occupant of the building or premises to resist reasonable force used by the authorized inspector, acting pursuant to this subsection.

(2) Whenever an emergency situation exists in relationship to the enforcement of any of the provisions of this ordinance, an authorized inspector upon a presentation of proper credentials or identification, in the case of an unoccupied premises or land may enter into any premises or upon any land within the Black Hawk Watershed Protection District. In emergency situations, such person or his authorized representative may use such reasonable force as may be necessary to gain entry into the premises or upon the land.

(3) For purposes of this subsection, an emergency situation includes any situation where there is imminent danger to the Black Hawk Watershed Protection District. It is unlawful for any owner or occupant of the premises or land to resist reasonable force used by the authorized official acting pursuant to this subsection.

(c) The Municipal Judge of the City of Black Hawk shall have power to issue search warrants upon the showing of probable cause for the implementations as provided in Subsection (a) of this Section.

(Ord. 2018-17 §4)

Sec. 13-67. Abatement notice.

In addition to the penalty provided by Section 13-69 hereof, the owner, occupant or person in control of any premises which are found to be in violation of any provision of this ordinance will be given a ten-day notice in writing to abate and remove the condition. However, where an emergency condition exists as defined in Section 13-66, this ten-day notice shall not apply.

(Ord. 2018-17 §5)

Sec. 13-68. Enforcement and abatement.

If any person, or any owner or occupant of any premises upon whom notice is served as provided by Section 13-67 hereof does not abate or remove the conditions described in the notice within the ten-day period provided, the City may at its discretion and in lieu of obtain-
ing a court injunction, proceed to abate the condition causing the pollution or contamination of the water supply and shall charge the person or owner or occupant of the premises with all of the cost of the abatement or removal. This ordinance may be enforced by the designated police officers of the City.

(Ord. 2018-17 §6)

Sec. 13-69. Penalty.

Any person violating any of the terms of this ordinance is guilty of a misdemeanor and upon conviction thereof shall be subject to the penalties set forth in Section 1-73 of this Black Hawk Municipal Code. Each day of the violation, after the ten-day notification period, shall be deemed a separate and additional violation.

(Ord. 2018-17 §7)

Sec. 13-70. Remedies.

The remedies herein provided shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

(Ord. 2018-17 §8)

Sec. 13-71. Exemption.

The City of Central's water system current and future shall be exempt from this ordinance.

(Ord. 2018-17 §9)


ARTICLE V

Enforcement

Sec. 13-81. Inspection.

(a) Whenever it is necessary to make an inspection to enforce any provision of this Chapter, the City Council may go upon any land located in the City at any reasonable time to inspect the same or to perform any duty imposed hereunder; provided that if such land or premises is occupied, such inspector shall first present proper credentials and request entry; and if such land or premises is unoccupied, he or she shall first make a reasonable effort to locate the owner, occupant or other person or persons having charge or control over the land or premises, and upon locating the owner, occupant or other person or persons, shall present proper credentials and request entry. If entry is refused, such person shall give the owner or occupant, or if the owner or occupant cannot be located after reasonable effort, he or she shall leave at the building or premises, twenty-four (24) hours' written notice of intention to inspect. The notice given to the owner or occupant or left on the premises as aforesaid shall state that the property owner has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a Municipal Judge of the City, or judge of any other court having jurisdiction.

(b) After the expiration of the twenty-four-hour period from the giving or leaving of such notice, the authorized inspector may appear before any Municipal Judge or judge of any other court having jurisdiction, and upon a showing of probable cause, shall obtain a search warrant entitling him or her to enter the land or the premises. Upon presentation of the search warrant and proper credentials, or possession of same in the case of unoccupied land or premises, the person may enter into the premises or upon the land using such reasonable force as may be necessary to gain entry therein.

(c) Whenever an emergency situation exists in relationship to the enforcement of any of the provisions of this Chapter, an authorized inspector upon a presentation of proper credentials or identification, or in the case of an unoccupied premises or land may enter into any premises or upon any land within the City or the Watershed Protection District. In emergency situations, such person may use such reasonable force as may be necessary to gain entry into the premises or upon the land. For pur-
poses of this Subsection, an emergency situation includes any situation where there is imminent danger to the Watershed Protection District or an imminent danger to or loss of, or injury or damage to, life, limb, property or the City's water supply. It is unlawful for any owner or occupant of the premises or land to resist reasonable force used by the authorized official acting pursuant to this Subsection. (Ord. 86-1 §6; Ord. 94-1 §1; Ord. 2001-07 §10)

Sec. 13-82. Abatement notice.

The owner, occupant or person in control of any premises which are found to be in violation of any provision of this Chapter will be given a ten-day notice in writing to abate and remove the condition. However, where an emergency condition exists as defined in Section 13-81 above, this ten-day notice shall not apply. (Ord. 86-1 §7; Ord. 94-1 §1)

Sec. 13-83. Abatement.

If any person, or any owner or occupant of any premises upon whom notice is served as provided by Section 13-82 above does not abate or remove the conditions described in the notice within the time specified, the City may, at its discretion and in lieu of obtaining a court injunction, proceed to abate the condition causing the violation of this Chapter, including abating the pollution, contamination or waste of the City's water supply when an emergency condition exists as defined in Section 13-81, the condition may be summarily abated without the expiration of the notice period. This Chapter may be enforced by the designated police officers of the City. The City shall charge the person, owner or occupant of the premises with all of the cost of the abatement or removal, including filing a lien as set forth in Section 13-27. (Ord. 86-1 §8; Ord. 94-1 §1)

Sec. 13-84. Penalty.

Failure to comply with the terms of this Chapter shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. For each day, or portion thereof, during which any violation continues, a person may be cited for a separate civil infraction. The remedies herein shall be cumulative and not exclusive, and in addition to any other remedies provided by law. (Ord. 94-1 §1)

Sec. 13-85. Exemption.

The City of Central's water system, current and future, shall be exempt from this Article. (Ord. 86-1 §11)

Secs. 13-86—13-100. Reserved.
ARTICLE VI

Cross-Connection Control Program


This Article is known and may be cited as the City of Black Hawk Cross-Connection Control Ordinance. (Ord. 2002-44 §4)

Sec. 13-102. Legislative intent.

It is the intent of the Board of Aldermen to protect the City's water system as follows:

(1) To protect the public potable water supply served by the City from the possibility of contamination or pollution by isolating, within its customers' internal distribution system, such contaminants or pollutants which could backflow or back-siphon into the public water system.

(2) To promote the elimination or control of existing cross-connections, actual or potential, between its customers' in-plant potable water systems and nonpotable systems.

(3) To provide for the maintenance of a continuing program of cross-connection control which will effectively prevent the contamination or pollution of all potable water systems by cross-connection. (Ord. 2002-44 §4)

Sec. 13-103. Responsibility.

(a) The Public Works Director is hereby delegated the responsibility for implementing a cross-connection control program in accordance with this Article and for enforcement thereof. If a backflow prevention device is required at the City water service connection to any owner's premises for the protection of the City water system, the Public Works Director shall give notice in writing to the owner to install an approved backflow prevention device at each service connection to the premises. The owner shall install an approved device at the owner's own expense.

(b) No provision of this Article exempts the owner from the cross-connection control provisions for internal water distribution systems as contained in the International Plumbing Code, which has been adopted by reference in Chapter 18 of this Code. (Ord. 2002-44 §4)

Sec. 13-104. Definitions.

When not clearly otherwise indicated by the context, the following words and phrases in this Article have the following meanings:

Approved means accepted by the Public Works Director as meeting an applicable specification stated or cited in this regulation, or as suitable for the proposed use.

Auxiliary water supply means any water supply on or available to the premises other than the purveyor's approved public potable water supply. These auxiliary waters may include water from another purveyor's public potable water supply or any natural source such as a well, spring, river, stream, pond, lake, etc., or "used waters" or "industrial fluids." These waters may be polluted or contaminated or may be objectionable and constitute an unacceptable water source over which the City does not have sanitary control.

Back-siphonage means the flow of water or other liquids, mixtures or substances into the distribution pipes of a potable water supply system from any source other than its intended source caused by the sudden reduction of pressure in the potable water supply system.
Backflow means the flow of water or other liquids, mixtures or substances, under positive or reduced pressure in the distribution pipes of a potable water supply from any source other than its intended source.

Backflow preventer means a device or means designed to prevent backflow or back siphonage into the public water supply by isolating the owner's water system from the public water system. The following definitions apply to backflow preventers:

a. Air gap means physical separation sufficient to prevent backflow between the free-flowing discharge end of the potable water system and any other system. Physically defined as a distance equal to twice the diameter of the supply side pipe diameter but never less than one (1) inch.

b. Atmospheric vacuum breaker means a device which prevents back siphonage by creating an atmospheric vent when there is either a negative pressure or sub-atmospheric pressure in a water system.

c. Double check valve assembly means an assembly of two (2) independently operating spring-loaded check valves with tightly closing shutoff valves on each side of the check valves plus properly located test cocks for the testing of each check valve.

d. Pressure vacuum breaker means a device containing one (1) or two (2) independently operated spring-loaded check valves and an independently operated spring-loaded air inlet valve located on the discharge side of the check or checks. Device includes tightly closing shutoff valves on each side of the check valves and properly located test cocks for the testing of the check valves.

e. Reduced pressure principal backflow preventer means an assembly consisting of two (2) independently operating approved check valves with an automatically operating differential relief valve located between the two (2) check valves, tightly closing shutoff valves on each side of the check valves plus properly located test cocks for the testing of the check valves and the relief valve. The device will operate to maintain the pressure in the zone between the two (2) check valves at a level less than the pressure on the public water supply side of the device. At cessation of normal flow, the pressure between the two (2) check valves will be less than the pressure on the public water supply of the device. In case of leakage of either of the check valves, the differential relief valve will operate to maintain the reduced pressure in the zone between the check valves by discharging to the atmosphere. When the inlet pressure is two (2) pounds per square inch or less, the relief valve will open to the atmosphere.

Backpressure means the condition in which the owner's system pressure is greater than the supplier's system pressure caused by a pump, elevated tank, boiler or other means.

Certified inspector and tester means any person who has passed a state-approved or sponsored testing and inspection course, and who is listed by the State as a certified inspector/tester.

City means the City of Black Hawk.

Colorado Cross-Connection Control Manual means the manual published by the State of Colorado addressing cross-connection control practices, which will be used as a guidance document for the City in implementing a cross-connection control program.
Compliance period means the time between the receipt by the owner of a notice from the Public Works Director to install, test or repair a backflow preventer and the day upon which such installation, testing or repair shall be completed or ready for inspection by the Public Works Director.

Containment means the method of backflow prevention which requires a backflow preventer at the water service entrance.

Contaminant means a substance that will impair the quality of the water to a degree that it creates a health hazard to the public leading to poisoning or the spread of disease.

Cross-connection means any actual or potential connection between the public water supply and a source of contamination or pollution.

Fixture isolation means the method of backflow prevention in which a backflow preventer is located to correct a cross-connection at an in-plant location rather than at a water service entrance.

Hazard means any condition, device or practice in the water supply system and its operation which, in the judgment of the Public Works Director, creates or may create a danger to the health and well-being of the water consumer. Hazards include, but are not limited to, plumbing type cross-connections that have not been properly protected by an approved backflow preventer, any actual or potential threat to the physical properties of the water system or to the potability of the City's potable water system or the owner's potable water system which would constitute a nuisance or be aesthetically objectionable or could cause damage to the system or its appurtenances, or any actual or potential introduction of a pollutant or contaminant into the City's potable water system or the owner's potable water system which would have a protracted effect on the quality of the potable water. The degree of hazard will be derived from an evaluation of the potential risk to public health and the adverse effect of the hazard upon the City's potable water system and/or the owner's potable water system.

Nonpotable water means water that is not safe for human consumption or that is of questionable potability.

Owner means any person who has legal title to, or license to operate or inhabit, a property upon which a cross-connection inspection is to be made or upon which a cross-connection is present.

Person means any individual, partnership, company, public or private corporation, political subdivision or agency of the State, agency or instrumentality or the United States or any other legal entity.

Pollutant means a foreign substance that, if permitted to get into the public water system, will degrade its quality so as to constitute a hazard or impair the usefulness or quality of the water to a degree which does not create an actual hazard to the public health but which does adversely and unreasonably affect such water for domestic use.

Potable water means water free from impurities in amounts sufficient to cause disease or harmful physiological effects. The bacteriological, chemical and radiological quality shall conform with state drinking water regulations.

Water service entrance means that point in the owner's water system beyond the sanitary control of the City; generally considered to be the outlet end of the water meter and always before any unprotected branch. (Ord. 2002-44 §4)
Sec. 13-105. Administration.

(a) The City will operate a cross-connection control program, to include the keeping of necessary records, which fulfills the requirements of the Colorado Cross-Connection Control Manual.

(b) The owner shall allow his or her property to be inspected for possible cross-connections and shall follow the provisions of the City's program and the state regulations if a cross-connection is permitted.

(c) If the City requires that the public supply be protected by containment, the owner shall be responsible for water quality beyond the outlet end of the containment device and should utilize fixture outlet protection for that purpose. The owner may utilize public health officials or personnel from the City, or their delegated representatives, to assist in the survey of the facilities and to assist in the selection of proper fixture outlet devices and the proper installation of these devices. (Ord. 2002-44 §4)

Sec. 13-106. Requirements.

(a) City.

(1) On new installations, the City will inspect building plans and/or premises to determine the type of backflow preventer that will be required. Building plans must show water service type, size and location; meter size and location; backflow preventer size, type and location; and fire system service line, size and type of backflow preventer.

(2) For premises existing prior to the start of this program, the City will perform evaluations and inspections of plans and/or premises and inform the owner by letter of any corrective action deemed necessary, the method of achieving the correction, and the time allowed for the correction to be made. Ordinarily, sixty (60) days will be allowed; however, this time period may be shortened depending upon the degree of hazard involved and the history of the device in question.

(3) The City will not allow any cross-connection to remain unless it is protected by an approved backflow preventer.

(4) The City shall inform the owner by letter of any failure to comply. The City will allow an additional fifteen (15) days for the correction. In the event the owner fails to comply with the necessary correction, the City will inform the owner by letter that the water service to the owner's premises will be terminated within a period not to exceed five (5) days. In the event that the owner informs the City of extenuating circumstances as to why the correction has not been made, a time extension may be granted by the City, but in no case will exceed an additional thirty (30) days.

(5) If the City determines at any time that a serious threat to the public health exists, the water service will be terminated immediately.

(6) The City will begin initial premises inspections to determine the nature of existing or potential hazards following the approval of this program. The City may perform additional premises inspections at any time thereafter.

(b) Owner.

(1) The owner shall be responsible for the elimination or protection of all cross-connections on his or her premises.

(2) Backflow preventers shall be installed immediately inside the structure being served and immediately downstream of
the water meter and, in all cases, before the first branch line leading off the service line.

(3) Backflow preventers shall be installed in an accessible location to facilitate inspection, testing and maintenance. Adequate drainage for the device must be provided for in the event that water is released.

(4) Backflow preventers on fire lines shall have outside stem and yoke ("O.S. & Y") valves and be listed by the National Fire Protection Association.

(5) Backflow preventers shall be installed in the horizontal position. A variance may be granted upon review by the Public Works Director.

(6) Reduced pressure backflow preventers shall be installed at least twelve (12) inches above finished grade to allow clearance for repair work. Proper drainage shall be provided for the relief valve and may be piped away from the location, provided that it is readily visible from above grade and provided that the relief valve is separated from the drain line by a minimum of double the diameter of the supply line.

(7) The owner, after having been informed by a letter from the City, shall, at his or her expense, install, maintain and test, or have tested, any and all backflow preventers on his or her premises.

(8) The owner shall correct any malfunction of the backflow preventer which is revealed by periodic testing.

(9) The owner shall inform the City of any proposed or modified cross-connections and any existing cross-connections of which the owner is aware but have not been found by the City.

(10) The owner shall not install a bypass around any backflow preventer unless there is a backflow preventer of the same type on the bypass. Owners who cannot shut down operation for testing of the device must supply additional devices necessary to allow testing to take place.

(11) The owner shall install backflow preventers in a manner approved by the City.

(12) The owner shall install only backflow preventers approved by the City.

(13) Any owner having a private well or other private water source must have written permission from the City if the well or source is cross-connected to the City's system. Permission to cross-connect may be denied by the City. The owner may be required to install a backflow preventer at the service entrance if a private water source is maintained, even if it is not cross-connected to the City's system.

(14) In no case will it be permissible to have connections or tees upstream of the backflow preventer.

(15) The owner shall be responsible for the payment of all fees for device testing and retesting in the case that the device fails to operate correctly.

(16) All laws and regulations contained in this Article shall apply regardless of the age of the facility. (Ord. 2002-44 §4)

Sec. 13-107. Existing in-use backflow preventers.

(a) Any existing backflow preventer will be allowed by the City to continue in service unless, in the opinion of the Public Works Director, the degree of hazard is such as to
supersede the effectiveness of the present backflow preventer, or result in an unreasonable risk to the public health. Where the degree of hazard has increased, as in the case of a residential installation converting to a business establishment, any existing backflow preventer must be upgraded to a reduced pressure principal device or a reduced pressure principal device must be installed in the event that no backflow device was present.

(b) Backflow preventers currently installed which are not approved shall be replaced with an approved device within three (3) years of adoption of the ordinance codified herein, unless the device fails an annual operational test. If the device fails any such test, it shall be replaced with an approved device within thirty (30) days from the date of the test. However, this time period may be shortened depending upon the degree of hazard involved and the history of the device in question. (Ord. 2002-44 §4)

Sec. 13-108. Periodic testing.

(a) It is the responsibility of the owner to have certified inspections and operational tests made on all backflow preventers upon installation and at least once per year thereafter. The Public Works Director may require certified inspections at more frequent intervals. These inspections and tests shall be made at the expense of the owner and shall be performed by a certified inspector.

(b) The testing shall be conducted during the City's regular business hours. Exceptions to this, when at the request of the owner, may require additional charges to cover the increased costs to the City.

(c) Any backflow preventer which fails during a periodic test shall be repaired or replaced. When repairs are necessary, upon completion of the repair, the device will be retested at the owner's expense to ensure correct operation.

High hazard situations will not be allowed to continue unprotected if the backflow preventer fails the test and cannot be repaired immediately. In other situations, a compliance date of not more than thirty (30) days after the test date will be established. The owner is responsible for spare parts, repair tools or a replacement device. Parallel installation of two (2) devices is an effective means of the owner ensuring uninterrupted water service during testing or repair of devices and is strongly recommended when the owner desires such continuity. (Ord. 2002-44 §4)


(a) The compliance period for installation, inspection and testing, or repair of a backflow preventer shall be as follows:

(1) Existing facilities: Within sixty (60) days from the effective date of the ordinance codified herein.

(2) New construction or alteration requiring a building permit: Prior to a certificate of occupancy or final inspection by the Building Division.

(3) Any facility with a backflow incident: Within ten (10) days from date of occurrence.

(b) Backflow prevention shall be provided using an air-gap or a reduced pressure principal backflow preventer for the following facilities:

(1) Automotive service station or repair shop.

(2) Auxiliary water supply.

(3) Boiler (nondomestic).

(4) Carbonator.
(5) Casino.

(6) Commercial service line greater than four-inch diameter.

(7) Car wash.

(8) Food processing and packing plant.

(9) Greenhouse.

(10) Hospital.

(11) Hotel and lodging facility.

(12) Kennel.

(13) Laboratory.

(14) Laundry or dry-cleaning service.

(15) Manufacturing and industrial facility.

(16) Medical office.

(17) Morgue and mortuary.

(18) Multi-storied building.

(19) Photographic studio and laboratory.

(20) Sewage treatment plant.

(21) School.

(22) Swimming pool.

(23) Veterinary office.

(24) Water treatment plant.

(c) Backflow prevention shall be provided using a reduced pressure principal backflow preventer for the following facilities:

(1) Solar heating system with make-up water.

(2) Fire sprinkler system with antifreeze or other additives.

(d) Backflow prevention shall be provided using an air-gap, a reduced pressure principal backflow preventer or a double check valve assembly for the following facilities:

(1) Fire sprinkler system with no chemicals added.

(2) Dry type fire sprinkler systems.

(e) The owner of any building or facility not listed above may be required by the Public Works Director to install a backflow preventer. The compliance period and type of backflow preventer required will be determined by the Public Works Director. (Ord. 2002-44 §4)

Sec. 13-110. Reporting and recordkeeping.

The certified inspector will provide a report to the Public Works Director of the results of inspections, tests and maintenance. This report will be submitted within ten (10) days following the completion of the inspection, test or maintenance of the device. The certified inspector shall also attach a card to the backflow preventer following each inspection, test or maintenance activity to document and date the activities performed. Records of all inspections, tests or maintenance activities, including materials and parts changed, shall be kept by the certified inspector, the owner and the Public Works Director for a period of not less than three (3) years. (Ord. 2002-44 §4)

Sec. 13-111. Backflow preventers.

(a) Any backflow preventer required herein will be of a model and size approved by the Public Works Director. The term approved backflow preventer means a device that has been manufactured in full conformance with the standards established by the latest version of the
Colorado Cross-Connection Control Manual. Final approval is evidenced by a certificate of approval issued by an approved testing laboratory certifying full compliance with the Colorado Department of Public Health and Environment standards and ASSE or USC FCCC & HR specifications. In addition to the aforementioned standards and specifications, all backflow preventers will have a unique serial number attached to the device by the manufacturer.

(b) The following testing laboratory has been qualified to test and certify backflow preventers:

Foundation for Cross-Connection Control and Hydraulic Research
University of Southern California
University Park
Los Angeles, CA 90089-0231

Testing laboratories other than the laboratory listed above will be added to an approved list as they are qualified by the Public Works Director.

(c) Backflow preventers that may be subjected to backpressure or back-siphonage that have been fully tested and have been granted a certificate of approval by said qualified laboratory and are listed on the laboratory's current list of approved devices, and newly installed devices which have been inspected and installed to the satisfaction of the Public Works Director, are deemed to be in compliance with this Article. (Ord. 2002-44 §4)

Sec. 13-112. Right of entry.

By previously arranged appointment, the Public Works Director shall have the right of entry to inspect any and all buildings and premises for cross-connections relative to possible hazards. This right of entry shall be a condition of the water service in order to protect the health, safety and welfare of the water customers. Where building security is required, the backflow preventer should be located in an area not subject to security. (Ord. 2002-44 §4)

Sec. 13-113. Violation.

Any person who violates any provision of this Article shall be subject to the penalties set forth in Section 13-84 of this Code and, after notice and hearing, be subject to termination of water service to the owner's property. (Ord. 2002-44 §4)

Secs. 13-114—13-130. Reserved.
CHAPTER 15

Sign Code*

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ARTICLE I
General Provisions

Sec. 15-1. Purpose.

(a) The purpose of this Article is to create a comprehensive and balanced system of signs to facilitate and encourage innovative signs which will aid in the easy and pleasant communication between people and the environment and to avoid the visual clutter that is potentially harmful to persons in vehicles, pedestrians, property values, business opportunities and community appearance.

(b) It is not the purpose or intent of this Sign Code to regulate the message displayed on any sign; nor is it the purpose or intent of this Sign Code to regulate any building design or display not defined as a sign, or any sign which generally cannot be viewed from outside a building. The content of the message or speech displayed on the sign shall not be reviewed or considered, within the limits of public decency, in determining whether to approve or deny a sign permit.

(c) To accomplish these purposes, it is the intent of this Article to encourage and authorize the use of signs in the community which will:

(1) Be compatible with and enhance the character of the property and architecture when considered in terms of scale, color, materials, lighting levels, adjoining buildings and uses, and historic character;

(2) Be appropriate to and expressive of the existing on-site business or activity for which the signs are displayed;

(3) Be creative in the use of unique two- and three-dimensional forms, employ exceptional lighting design and represent exceptional graphic design, including the use of color, pattern, typography and materials.

Signage which simply maximizes allowable volume in rectangular form is strongly discouraged;

(4) Be expressive to the identity of individual activities and to the community as a whole;

(5) Encourage signs which are legible in their surroundings; conserve the architectural characteristics of the buildings upon which they appear; are aesthetically consistent and appropriate to the activities identified; and are expressive of both the architecture of the building which the sign serves, and the individuality of the owner of the building; and

(6) Be of high quality and durable materials.

(Ord. 2019-23 §1)

Sec. 15-2. General regulations.

(a) No sign shall be erected unless it is in full compliance with this Chapter, with the regulations for the zoning district in which it is located and with all applicable laws of the City and the State. The general provisions of this Section shall apply to all signs, except as modified or otherwise provided for by the specific requirements for any special sign or by the specific provisions of any zoning district.

(b) Unless specifically permitted by another Section of this Chapter, it shall be unlawful for any person, firm or corporation to erect, alter, construct or reconstruct any sign without first obtaining a permit from the Planning Department.

(c) All signs shall meet the applicable design, construction and related standards specified in the International Building Code. An electrician licensed by the State shall perform all electrical work. No electrical work shall be performed without first having obtained a valid electrical permit issued by the City of Black
Signs which block any window, doorway or any other opening required for proper ventilation, light or exit facilities as specified in the current edition of the International Building Code are prohibited.

(d) No sign shall be placed so as to block any traffic sign or so as to interfere with the free movement of traffic or to interfere with the vision of motorists, bicyclists or pedestrians. These include signs which, by their light or focus, cause a traffic and/or safety hazard and signs that project into any public right-of-way, except public signs as specified in Article III of this Chapter, or signs specifically authorized to project over the right-of-way by the City Council by means of a license agreement.

(e) Enforcement of this Chapter shall be carried out in accordance with Chapter 16, Article XVI of the Black Hawk Municipal Code and as provided in this Chapter.

(f) Every sign shall be maintained in good structural condition. The City Manager, or his designee, shall inspect and have the authority to order the repainting, alteration, removal or general upgrading of the condition of any sign which constitutes a hazard or violates the stated purposes of this Chapter through dilapidation or inadequate maintenance.

(g) For the purposes of this Chapter, no building shall have more than four (4) sides regardless of the number of breaks a side of a building may have or the number of oblique angles a building may contain.

(h) Any proposed sign or sign plan allowed by the code which exceeds the maximum requirements set forth below shall be subject to an appeal or variance in accordance with Section 15-4 of this Chapter.

(i) Materials not allowed for permanent signs: Permanent signs shall not be created using fabric (excluding awnings), vinyl, paper, canvas, cardboard, or any other lightweight material.

(j) In case of projecting or blade signs that utilize the airspace above public right-of-way, a license agreement between the applicant and the City shall be required prior to installation of any such sign.

(Ord. 2019-23 §1)

Sec. 15-3. Prohibited signs.

The following signs are prohibited and shall not be erected or maintained, unless specifically permitted by another section:

(a) Animated signs and signs which are mechanically agitated or designed to move or make any motion whatever;

(b) Signs using any sound, noise-making or transmitting device with such sound device used separately for advertising purposes beyond the confines of a building or property;

(c) Sign which are held by a sign spinner;

(d) Signs affixed to parked vehicles, including but not limited to automobiles, trucks, buses, semi-trailers (attached or detached), trailers, mobile homes, boats, vans, etc.;

(e) Balloons, pennants or wind-enhanced devices;

(f) Roof signs;

(g) Searchlights, except for specific grand openings for a limited amount of time if approved by a special events permit;

(h) Strings of light bulbs, other than traditional holiday decorations. String lights are not permitted as signage unless submitted through a lighting plan to be approved (permanent style installation) through the City Council design review and compatibility process as specified in Section 16-368. String lighting must meet all building/fire
safety codes and life safety issues and shall require periodic inspections by Building and Fire Departments;

(i) Signs which block any window, doorway, or any other opening required for proper ventilation, light, or exit facilities;

(j) Signs or posters on or extending into any public right-of-way, except as authorized by resolution of City Council and subject to a license agreement between the applicant and the City prior to installation of any such sign or poster;

(k) Off-premise advertising signs or billboards;

(l) Portable signs or devices unless specifically authorized;

(m) Wind-powered devices or any advertising device constructed to be agitated by wind;

(n) Nuisance signs which by their light or focus create a nuisance for a surrounding or adjacent property or use; and

(o) Placement of a vehicle or trailer for more than twenty-four (24) hours, on which there is a permanent or temporary motor vehicle sign, on private or public property for the purposes of conveying an advertising message, a business or products or for the purpose of directing people to a business or business activity unless a permit for signage has been approved pursuant to this Sign Code. Public transit vehicles are exempt from this subsection.

(1) The motor vehicle sign shall be considered in violation if the following circumstances exist:

a. The motor vehicle sign is attached to a vehicle or trailer that is unregistered or not operable;

b. The motor vehicle sign is larger in any dimension than or extends beyond any surface of the vehicle or trailer to which it is attached;

c. The motor vehicle sign is attached to a vehicle or trailer parked or stored in a public right-of-way or an area not designed, designated, or commonly used for parking;

(2) The motor vehicle sign may be considered in compliance if evidence can be shown of the following:

a. If the signs are displayed on vehicles which are being operated or stored in the normal course of a business, such as signs indicating the name of the owner or business which are located on moving vans, delivery trucks, vans and vehicles; provided that the primary purpose of such vehicles is not the display of signs, and provided further that they are stored or parked in areas and in such a fashion as is appropriate to their use as vehicles;

b. The activities that are being actively undertaken during such periods of parking involve loading or unloading of goods for customers, providing services to customers, conducting business, or engaging in work breaks;

c. The activities require the presence of the vehicle for the purposes of transporting equipment, people, supplies and/or goods necessary for the carrying out of such activities;

d. The activities above are not, other than incidentally, related to advertising, identifying, displaying, directing or attracting attention to an
object, person, institution, organization, business, product, service, event or location; or

e. When vehicles are parked or stored in such a way to exceed the duration of twenty-four (24) hours the vehicle mounted sign shall constitute a permanent sign for a building or premises. The sign displayed on the vehicle shall be counted as part of the detached sign area permitted on the premises.

(Ord. 2019-23 §1)

Sec. 15-4. Appeals and variances.

(a) Appeals. Any order, requirement, decision or determination made by any official charged with the enforcement or administration of this Chapter may be appealed to the Board of Appeals through the procedures of Section 16-326.

(b) Sign variances. Sign variances related to numerical standards shall be processed in accordance with Article XV of Chapter 16 of the Black Hawk Municipal Code.

(Ord. 2019-23 §1)

Sec. 15-5. Legal nonconforming signs.

(a) A legal nonconforming sign shall be any sign which:

(1) On the effective date of the ordinance codified in this Chapter, was lawfully maintained and had been lawfully erected in accordance with the provisions of any prior applicable sign regulation but does not conform to the limitations established by this Chapter; or

(2) On or after the effective date of the ordinance codified in this Chapter, was lawfully maintained and erected in accordance with the provisions of this Chapter but, by reason of amendment to this Chapter after the effective date thereof, does not conform to the limitations established by the amendment to this Chapter in the district in which the sign is located.

(b) Continuation of a legal nonconforming sign is subject to the termination provisions below. A legal nonconforming sign may be continued and shall be maintained in good condition, but shall not be:

(1) Changed to another non-conforming sign;

(2) Structurally altered;

(3) Altered or repaired so as to increase the degree of non-conformity of the sign;

(4) Re-established after discontinuance for ninety (90) consecutive days of the use to which the sign pertained;

(5) Continued in use after a change of the business or activity to which the sign pertains;

(6) Re-established after damage or destruction if the estimated cost [of] reconstruction exceeds fifty percent (50%) of its assessed valuation as shown in the original sign permit;

(7) Abandoned for a continuous period of ninety (90) days; or

(8) In violation of provisions of this Chapter 15 of the Black Hawk Municipal Code.

(c) Exemptions are given to the following signs, but nothing shall be construed as relieving the owner of the sign from the responsibility of its erection and maintenance, and its compliance with the provisions of the Black Hawk Municipal Code, this Chapter or any other law or ordinance regulating the same:

(1) Signs that are deemed historic in nature and permitted by the Black Hawk Municipal Code;
(2) Any existing sign which has previously been granted a variance; or

(3) Any previously approved temporary banner sign or special event sign allowed by the previous Black Hawk Sign Code in force prior to this Sign Code being adopted by City Council on February 12, 2014 is allowed only until July 1, 2014. If such type of temporary banners or special event signs are desired on any property after July 1, 2014, they shall only be allowed if a property owner or business owner has submitted and received approval of such a request included within a comprehensive sign plan as regulated in Section 15-13 of this Chapter.

(Ord. 2019-23 §1)

Sec. 15-6. Violations and abandoned signs.

(a) The City Manager or his designee is hereby granted the power and authority to issue a notice of violation to the sign owner or to the sign owner's agent or manager for any sign maintained in violation of any provision of this Chapter. The sign owner or the sign owner's agent or manager shall commence action to correct such violation issued by the City Manager within thirty (30) days of the issuance of the notice of violation. Proof of the commencement of action to correct the violation must be furnished to the City Manager or its designee within thirty (30) days of the issuance of the notice of violation.

(b) If the sign owner, or any person responsible for the sign, fails to respond to the notice of violation within thirty (30) days or fails to correct the violation within sixty (60) days, the owner of the premises upon which the sign is located shall be responsible for the removal of the sign and the work shall be done within sixty (60) days following the notice of violation. The City Manager or his designee may cause the removal of the sign after the specified timeframe unless such violation causes an immediate safety hazard to the general public.

(c) Any signs in conformance with this Chapter pertaining to enterprises or occupants that are no longer utilizing the site shall be removed from the site or shall have the copy/text obliterated from such signs upon the expiration of ninety (90) days after the associated enterprise or occupant has vacated the premises. Any such sign not removed or modified within the required period shall be considered as abandoned and shall be removed by the City in accordance with Chapter 10, Article XIII of the Black Hawk Municipal Code.

(d) Any nonconforming sign(s) pertaining to enterprises or occupants that are no longer utilizing the site shall be removed from the site by the property owner upon the expiration of ninety (90) days after the associated enterprise or occupant has vacated the premises. Any such sign not removed by the property owner within the required period shall be considered as abandoned and shall be allowed to be removed by the City in accordance with Chapter 10, Article XIII of the Black Hawk Municipal Code.

(e) A sign removed by the City shall be held for not less than thirty (30) days, during which time it may be recovered by the owner upon payment to the City for removal and storage costs. If not recovered prior to the expiration of the 30-day period, the sign shall be sold or scrapped in accordance with the procedures for sale of unclaimed property in accordance with Chapter 10, Article XIII of the Black Hawk Municipal Code. The proceeds of the sale, less removal, storage and sale costs, shall be paid to the owner thereof.

(Ord. 2019-23 §1)

Secs. 15-7—15-10. Reserved.

ARTICLE II

Sign Applications, Permits and Plans

Sec. 15-11. Sign permit.

(a) Sign permit required. No on-site sign shall be erected, altered, reconstructed, maintained or moved in the City without first secur-
ing a permit from the City unless specifically allowed without a permit by this Chapter. The content of the message or speech displayed on the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit. Application for a permit shall be obtained from the Planning Department. Off-premise signs are not allowed.

(b) The owner or the owner’s authorized representative may apply for a sign permit for signs that identify the business or for signs providing information regarding the services of the business being advertised on the subject property.

(c) Sign permits shall be reviewed and approved in accordance with a property’s approved standard sign plan or comprehensive sign plan, as the case may be.

(d) The application for a sign permit shall be made on permit application forms provided by the Planning Department. All applications for sign permits shall be accompanied by payment of the fees provided by the fee schedule. The permit fee will be used to review the application and is not refundable or transferable.

(Ord. 2019-23 §1)

Sec. 15-12. Standard sign plans.

(a) Purpose. The standard sign plan is the device and process employed by the City to ensure an appropriate balance between building architecture, signage and neighborhood aesthetics for smaller buildings. This Section assumes that strict compliance with this Chapter provides effective signage for smaller projects and meets community goals for appearance and safety.

(b) Applicability.

(1) The standard sign plan process shall be used for applications for installation of signs in the Nonresidential Districts (Article III, Division 2 of this chapter) utilizing the building frontage to sign area ratio or the minimum sign size allowed for a property that does not have an approved comprehensive sign plan.

(2) In addition to the standard sign plan, the applicant shall follow the City Council design review and compatibility process as specified in Section 16-368 of the Black Hawk Municipal Code.

(c) Application filing. Applications for standard sign plans shall be submitted to the Planning Department.

(d) Submittal requirements.

(1) Applicants must submit a simple scaled sign plan with attached written stipulations for review and approval. Such stipulations shall consider all appropriate concerns including, but not limited to, the following items: the name and address of the project location, the name of the contractor manufacturing and/or installing the sign, relationship of the sign to adjacent properties, size, height, color, lighting, orientation, construction materials and typography.

(2) Standard sign plans shall include:

a. All signs, their location in site plan format, and color renderings of the proposed signage. Where lighting will have a significant impact on the visual interpretation of the sign, color renderings should be submitted to show the effects of the proposed lighting.

b. Dimensions of each proposed sign listed in a chart summarizing the area of each proposed sign together with the total allowed signage for the property. The height above grade shall be indicated for blade signs.
c. A statement as to the calculation of the allowed sign area, whether based on minimum allowance or building frontage.

(3) Sign regulations and standards are established in Section 15-43 and Section 15-44 of this Chapter.

(e) Affected parties. All parties affected by provisions of the standard sign plans must be signatories to such plans; provided, however, that if the multiple building complexes or any part thereof is governed by a management agreement, the duly constituted representative of the management association or firm shall be the signatory to such plans. It is unnecessary for owners or lessees to sign if said representative has signed on their behalf.

(f) City Council review and approval. Within forty-five (45) days of receipt of a complete application, the City Council shall act to approve, approve with conditions or deny the application for a standard sign plan. The standard sign plan shall be approved if:

(1) Implementation of the standard sign plan will provide signage that is compatible with the surrounding development;

(2) Implementation of the standard sign plan will result in architecture and graphics of a scale appropriate for the surrounding neighborhood;

(3) Implementation of the standard sign plan will provide signage consistent with the architecture and site plan characteristics of the proposed project;

(4) Implementation of the standard sign plan will be materially beneficial in achieving the goals and objectives of the City's standards that relate to community design and aesthetics;

(5) Implementation of the standard sign plan will be materially beneficial in achieving the goals and objectives cited in the standard sign plan statement of purpose.

(g) Modifications. Once approved by the City Council, a modification to any standard sign plan requires either City Council or Administrative review and approval.

(1) City Council approval is required for changes to a standard sign plan for major modifications including:

   a. An increase in the original approved sign area above ten percent (10%); or

   b. Any proposal that substantially deviates from the approved standard sign plan as determined by the City Manager or designee.

(2) Administrative approval is required for changes to a standard sign plan for minor modifications including:

   a. An increase in the original approved sign area of ten percent (10%) or less as long as the total sign area allowed by these regulations is not exceeded.

(h) Conformance. Nothing in these provisions shall be construed to deny the City Council or Administrative staff power to require any modification of, or release from, any provision of the standard sign plan so that the plan conforms to other City ordinances.

(Ord. 2019-23 §1)

Sec. 15-13. Comprehensive sign plans.

(a) Purpose. The comprehensive sign plan is the device and process employed by the City to ensure an appropriate balance between building architecture, signage and neighborhood aesthetics. This Section assumes that strict compliance with preceding sections of this Chapter
provides effective signage for smaller properties and developments and meets community goals for appearance and safety. However, as developments grow in size, opportunities for more effective signage increases. Larger sites offer opportunities for alternative regulation of the number, size, proportion and balance of signs according to alternative standards consistent with the types of establishments, state of the art technology and their approved architecture character.

(b) Applicability.

(1) A comprehensive sign plan shall be required for any proposal on a building located in a nonresidential district that includes additional sign area above the area allowed in a standard sign plan or any proposal that includes utilization of special event banners and signs for any special event as defined in the Black Hawk Municipal Code.

(2) In addition to the comprehensive sign plan, the applicant shall follow the City Council design review and compatibility process as specified in Section 16-368 of the Black Hawk Municipal Code.

(3) Comprehensive sign plans are not permitted within Residential Districts as defined by this Chapter.

(c) Application filing. Applications for comprehensive sign plans shall be submitted to the Planning Department.

(d) Submittal requirements.

(1) Applicants must submit a detailed comprehensive sign plan with attached written stipulations for review and approval. Such stipulations shall consider all appropriate concerns including, but not [limited to] relationship of signs to adjacent properties, size, height, color, lighting, technology options, orientation, construction materials and typography.

(2) Comprehensive sign plans shall include:

a. All signs, their location in site plan format, and color renderings of the proposed signage. Where sign lighting will have a significant impact on the visual interpretation of the sign, color renderings should be submitted to show the effects of the proposed signs and lighting.

b. Dimensions of each proposed sign listed in a chart summarizing the total area of each and all proposed signs together with the total allowed sign area for the property. The height above grade shall be indicated for blade signs and freestanding signs.

c. A statement as to the calculation of the allowed sign area based on the appropriate building frontage length for the building.

d. The site plan shall include the property lines of the subject site in order to determine that all signage is contained on the property.

e. In case of projecting or blade signs that utilize the airspace above public right-of-way, a license agreement will be generated by the City of Black Hawk for the applicant to review and it shall be reviewed for approval by City Council.

(f) No minimum or maximum standards are established for the comprehensive sign plan, except as follows:

(1) The total sign area proposed may not exceed one hundred thirty-five percent (135%) of the permitted sign area allowed on the subject property as calculated and regulated in Section 15-61. An additional thirty-five percent (35%) of sign area may be granted to a comprehensive sign plan if the application
includes the use of electronic message centers (EMC). Therefore, the total sign area proposed may be a maximum of one hundred seventy percent (170%) of the permitted sign area allowed on the subject property, if all requirements are met.

(2) Permanent window signage shall meet the requirements as set forth in Section 15-43(8).

(3) Temporary banner sign and special event signs.

a. Temporary banner sign. One (1) temporary vinyl style banner sign is allowed only if included in an approved comprehensive sign plan. A temporary banner sign shall not count toward the maximum sign area permitted for a given business and shall adhere to the following regulations:

1. There shall not be more than one (1) temporary banner sign attached to the building;

2. Such sign shall be placed in the approved designated display location on the building and shall be constructed out of high-quality material;

3. Such sign shall be allowed to be made of flexible plastic, cardboard, vinyl, fabric or similar non-rigid waterproof material;

4. Such sign shall be attached in an inconspicuous manner without zip ties, ropes or other similar visible material;

5. Such sign shall be adhered to the building with grommets and be attached with nuts, bolts or other similar non-visible fasteners;

6. Such sign shall not exceed thirty-two (32) square feet in size; and

7. Placement of such sign shall be allowed for thirty (30) consecutive days, six (6) times in a calendar year as specified by the business owner and proper notification to the Planning Department for such days.

b. Special event signs. Special event signs are allowed only if included in an approved comprehensive sign plan. Plan signs that are related to approved special events as defined in this Chapter 15 and Article X of Chapter 6 (Section 6-332) shall adhere to these regulations and are also subject to approval of a sign permit from the Planning Department and approval by staff, subject to and adhere to the following:

Standards:

1. Special event signs are allowed with the permitted special event, provided that the sign area shall be limited to a total of seventy-five (75) square feet and a maximum of three (3) such signs. Such signs must be on private property and securely attached to the wall of a permitted building or permitted structure on the site in a manner that does not allow the sign to wave or flap in any way;

2. Special event signs and any other approved special event associated items shall be located within one hundred (100) feet of the permitted special event area on the property which must be shown on the comprehensive sign plan and sign permit for the special event;

3. Method of attachment shall be shown in detail in the comprehensive sign plan and no strings,
rope or similar attachment item shall be visible from fifty (50) feet or more from such attachment location;

4. Special event signs shall not be placed above the roof line of any building or structure; and

5. Special event signs shall not be counted toward the allowed sign area for a property or business.

(g) The comprehensive sign plan shall be reviewed in terms of its impact on surrounding land uses and its compatibility with the purposes of this Chapter and with other City planning and zoning programs and regulations.

(h) All parties affected by provisions of the comprehensive sign plans must be signatories to such plans; provided, however, that if the multiple building complexes or any part thereof is governed by a management agreement, the duly constituted representative of the management association or firm shall be the signatory to such comprehensive sign plan. It is unnecessary for owners or lessees to sign if said representative has signed on their behalf.

(i) City Council review and approval. Within sixty (60) days of receipt of a complete application, the Council shall act to approve, approve with conditions or deny the application. The comprehensive sign plan shall be approved if:

(1) Implementation of the comprehensive sign plan will provide signage that is compatible with the surrounding development and designed with a high-quality appearance;

(2) Implementation of the comprehensive sign plan will result in architecture and graphics of a scale appropriate for the surrounding neighborhood and development area;

(3) Implementation of the comprehensive sign plan will provide signage consistent with the architecture and site plan characteristics of the proposed or existing project;

(4) Implementation of the comprehensive sign plan will be materially beneficial in achieving the goals and objectives of the City’s standards that relate to community design and aesthetics; and

(5) Implementation of the comprehensive sign plan will be materially beneficial in achieving the goals and objectives cited in the purpose of the Sign Code.

(j) Modifications. Once approved by the City Council, a modification to any comprehensive sign plan requires either City Council or Administrative review and approval.

(1) City Council approval is required for changes to a comprehensive sign plan for major modifications including:

a. An increase in the original approved sign area above ten percent (10%); or

b. Any proposal that substantially deviates from the approved comprehensive sign plan as determined by the City Manager or designee.

(2) Administrative approval is required for changes to a comprehensive sign plan for minor modifications including:

a. An increase in the original approved sign area of ten percent (10%) or less as long as the total sign area allowed by these regulations is not exceeded.

(k) Conformance. Nothing in these provisions shall be construed to deny the City Council power to require any variance or modification of, or release from, any provision of an
applicant's proposed comprehensive sign plan so that the plan conforms to other City ordinances.  
(Ord. 2019-23 §1)

Sec. 15-14. Administrative review process. 

The permit application and applications for modifications to existing sign plans shall be submitted to the City Manager or his designee. The Planning Department Director as the City Manager’s designee will determine whether the application will require Council approval and, if necessary, will schedule the application at the next available meeting for City Council review and approval, except for initial standard and/or comprehensive sign plans, which are subject to public hearing before City Council.  
(Ord. 2019-23 §1)

Sec. 15-15. Administrative actions on sign permit applications. 

(a) Staff in the Planning Department shall approve, approve with modifications or conditions, or deny a sign permit application. A sign application for signs meeting the size, construction, location, electrification and operation provisions of this Chapter and an approved sign plan shall be approved without modifications or conditions unless the Planning Department makes one (1) or more of the following findings: 

(1) That the shape, design, placement, color, style or quantity of text, illumination or reflected light of a sign conflicts or interferes with traffic, both vehicular and pedestrian, from a public safety standpoint, by distracting attention or obstructing vision. 

(2) That the shape, design, placement, color, style or quantity of text, illumination or reflected light of a sign is incongruous with or detracts from the distinct architectural or historic design or character of the building to which the sign is affixed or of the neighborhood in which the sign is located. 

(3) That the sign obscures other signs from primary view or dominates its immediate vicinity to such an extent as to detract from the visibility of other signs, buildings of architectural or historic significance, or public view corridors. 

(b) If the Director denies, modifies or conditionally approves a sign application pursuant to this Chapter, it shall state with particularity the aspects of the sign program that justify findings and shall afford the applicant an opportunity to submit a revised application to remedy the inadequacies of the original sign application. 

(c) The Director shall not deny a sign application because of the content or message of a sign, within limits of public decency, or direct that the content or message of a sign be altered or modified as a condition of approval.  
(Ord. 2019-23 §1)

Sec. 15-16. Permit fee. 

No sign shall be installed without permit fees having been paid to the City of Black Hawk and a permit issued by the Planning Department. The City Council shall set permit fees and include them in the City fee schedule.  
(Ord. 2019-23 §1)

Secs. 15-17—15-30. Reserved.

ARTICLE III
Sign Standards
Division 1
Residential Districts


(a) This Division addresses those signs which are allowed within the residential districts of the City. 

(1) Residential districts are defined as those areas that provide for land use activities described as the following: Single-family
dwelling unit; neighborhood playground, park or common area; home-based businesses; parking (as specified in the Section 16-263 of the City of Black Hawk Municipal Code); and special review uses.

(b) Types of signs allowed in the residential districts of the City:

(1) Permanent signs. Flags; historical, home occupation; wall; and street address and identification signs.

(2) Temporary signs. Banners, community event signs; large temporary signs; small temporary signs; and other temporary signs (election season signs, holiday and seasonal decorations, and weekend sale).

(c) Specific requirements for the signs listed above are explained in permanent and temporary sign regulations for residential districts, Sections 15-33 and 15-34. (Ord. 2019-23 §1)

Sec. 15-32. Permanent sign permit approval.

(a) All permanent signs in residential districts require an administrative review and approval unless the sign in question is deviating from the standards set in Section 15-33 (permanent sign regulations for residential districts), in which case a City Council approval will need to be requested by the applicant. Staff shall not approve variances of numerical deviations from the standards indicated herein. (Ord. 2019-23 §1)

Sec. 15-33. Flag and permanent sign regulations for residential districts.

(a) Flags. American, Colorado and City of Black Hawk flags shall be flown in accordance with the United States Flag Code, 36 U.S. Code; flagpoles may be mounted on the fronts of buildings as outrigger poles, not to exceed a forty-five degree (45°) angle from vertical (pointed upward), and ten (10) feet in length with a maximum flag size of four (4) feet in length and six (6) feet in length; and flagpoles may not be mounted on a roof or parapet. Flags do not count toward allowed sign area. Ground mounted flag poles are allowed with a maximum of six (6) poles. If more than six (6) flag poles are desired, they must be included in a standard sign plan.

<table>
<thead>
<tr>
<th>Building Height (stories)</th>
<th>Pole Height (feet)</th>
<th>Maximum Flag Size</th>
<th>Nighttime Required Illumination</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 2</td>
<td>20</td>
<td>4’×6’ or 24 ft.²</td>
<td>Indirect illumination 1 metal halide (maximum 70 watt) spot light per flag</td>
</tr>
<tr>
<td>3 to 4 or more</td>
<td>25</td>
<td>4’×8’ or 32 ft.²</td>
<td>Indirect illumination 2 metal halide (maximum 70 watt) spot lights per flag</td>
</tr>
</tbody>
</table>

(b) Permanent signs; performance standards. All permanent signs shall comply with the area, dimension and height requirements set forth in this Article.

(1) No more than two (2) permanent signs may be placed on a residential property;

(2) Each residential permanent sign shall be limited to two (2) square feet;

(3) No residential permanent sign shall be placed over ten (10) feet in height above grade directly adjacent to the wall of the building on which the sign is located;

(4) A residential permanent sign shall be mounted to the wall of the principle building on the property. (Ord. 2019-23 §1)

Sec. 15-34. Temporary sign regulations for residential districts.

(a) Temporary signs requiring Administrative approval and permit:

(1) Community event signs. Temporary signs used for announcing community events and activities. Use of these signs is limited to
notification of public events or other occurrences of public interest and are subject to the following standards:

   a. Community event signs are to be placed at the designated community event sign locations as determined through the City Manager's approval;

   b. Community event signs are to be placed no more than two (2) weeks prior to the event and must be removed within seven (7) days after the event;

   c. No more than one (1) community event sign may be placed on a given site to advertise any one (1) event;

   d. Community event signs shall be limited to thirty-two (32) square feet;

(2) Large temporary signs. Large temporary signs which exceed the restrictions in Section 15-34(b)(6) require administrative approval and permit and are subject to the following restrictions:

   a. Temporary signs shall not exceed thirty-two (32) square feet per face or over twelve (12) feet above street grade in height;

   b. Temporary signs shall be displayed only on the property to which they pertain;

   c. There shall be not more than four (4) temporary signs on each property;

   d. Temporary signs shall not be illuminated; and

   e. Temporary signs may be displayed for the duration of a construction project or transaction and they shall be removed upon completion of the project or transaction.

(b) Temporary signs are allowed without a permit:

   (1) Election season signs. These signs are allowed thirty (30) days prior to a scheduled election, and must be removed three (3) days immediately following the election as defined in this Article; no more than one (1) sign for each national, State or local ballot question or candidate is permitted on a residential parcel. Such signs shall not exceed four (4) square feet per face, not be taller than four (4) feet, and must be on private property and shall not interfere with any pedestrian or vehicular route on such property.

   (2) Holiday and seasonal decorations. Holiday string lights or colored tree lights may be used for decorative purposes to coincide with the holiday season and shall be installed according to the National Electrical Code. Holiday string lights or colored tree lights may be installed beginning on October 1 and must be removed no later than February 28 of the following year. Holiday string lights or colored tree lights may be illuminated during the holiday season, which begins on November 1 and continues to February 15 of the following year. All other holiday/seasonal decorations may be used twenty (20) days prior to a national holiday or seasonal change and shall be removed ten (10) days after the national holiday or seasonal change. Illumination is allowed. Flashing lights are discouraged, but not prohibited.

   (3) Limited duration signs. These temporary signs are allowed without a permit from noon on Friday until noon the following Monday. A maximum of two (2) signs are allowed on the property for which the signs are used for. They are not allowed on any publicly-owned property. They shall not exceed six (6) square feet per face. If freestanding they shall not exceed four (4) feet in height.
(4) Landscape lighting. Lighting of/on landscaping is allowed year-round on public property on live landscaping or on or above a hardscape. The same type of lighting is allowed on private property if a certificate of architectural compatibility is approved by City Council in accordance with Section 16-368 of the Black Hawk Municipal Code.

(5) Building permits. Signs announcing the City or State approved building permits on the property are exempt from permit requirements. The permit should be in a noticeable location that is visible to a visiting inspector.

(6) Small temporary signs. Small temporary signs do not require a permit and shall be subject to the following restrictions:

a. Temporary signs shall not exceed six (6) square feet per face and the top of the sign shall not be higher than ten (10) feet above street grade;

b. There shall be not more than two (2) temporary signs on any property;

c. Temporary signs shall be displayed only on the property to which they pertain;

d. Temporary signs shall not be illuminated; and

e. Temporary signs may be displayed for the duration of a construction project or transaction and they shall be removed upon completion of the project or transaction.

(Ord. 2019-23 §1)

Sec. 15-35. Illumination.

(a) Color of light. Illumination in residential districts shall be of white color only. For holiday decoration illumination standards please see Article III, Section 15-34, above.

(b) Type of illumination. Only indirect illumination shall be allowed in residential districts. Any other type of illumination is considered prohibited.

(Ord. 2019-23 §1)


Division 2
Nonresidential Districts

Sec. 15-41. General.

(a) This Section addresses those signs which are allowed within the nonresidential districts of the City:

(1) Nonresidential districts are defined as those areas that provide for land use activities described as the following, including and not limited to: casino, retail and services, lodging accommodations; restaurants; indoor and outdoor recreation and amusement; bars and lounges; offices; parks and common areas; area-wide transportation facilities; parking; public facilities; meeting halls; school, church, hospital, convention center or recreation facility; trade services; utility infrastructure and services; repair and equipment shops, and automobile service stations;

(b) Types of signs allowed in the nonresidential districts of the City:

(1) Permanent signs. Awning, changeable copy, canopy, electronic message centers, freestanding, marquee, joint identification, blade, wall, bulletin boards and window signs.

(2) Temporary signs. Community event signs, large temporary signs, small temporary signs, and other temporary signs (election signs, holiday and seasonal decorations, and limited duration signs).
(c) A maximum of five (5) signs displaying information such as open/closed, store hours, address, and other similar information that is two (2) square feet or smaller shall be exempt from the total sign area allowed.

(d) All properties in this district are permitted a total sign area that is equal to the length of the building frontage (ratio: one (1) square foot of sign area for every one (1) linear foot of building frontage). Furthermore, all properties located within the nonresidential districts are entitled to a minimum of one hundred twenty-eight (128) square feet of sign area.

(e) Multi-tenant buildings. These buildings will be allowed to use joint identification signs and will be granted one hundred twenty-eight (128) square feet for the anchor sign panel. An additional sixty-four (64) square feet will be granted to each tenant to be used for individual business signs. These signs can be any type of sign approved in this Section as long as they are consistent in color, size, material, and letter size with all tenants and must be part of an approved comprehensive sign plan for such property.

(f) Each property is entitled to divide its total sign area between the types of signs permitted in the nonresidential zoning district listed in Section 15-43, which allows each property to have multiple signs as long as the total area of those signs combined does not exceed the total sign area allowed for that property.

(Ord. 2019-23 §1)

Sec. 15-42. Permanent sign permit approval.

(a) Buildings with total floor area greater than or equal to five thousand (5,000) square feet:

(1) The owner of any building located in a nonresidential district measuring total floor area equal to or greater than five thousand (5,000) square feet is required to submit a comprehensive sign plan application and a certificate of architectural compatibility application prior to issuance of a sign permit for a given property in accordance with the following criteria in Section 15-42(a)(1)(a) through (d). The regulations governing a comprehensive sign plan and certificate of architectural compatibility can be found in Section 15-13 (comprehensive sign plan) of this Chapter and Section 16-368 (City Council design review and compatibility process) of the Black Hawk Municipal Code, respectively. Approval is required for:

a. Initial sign installation (including a change in signage due to change in business name).

b. Major modifications (changes to greater than ten percent (10%) of the initial approved comprehensive sign plan sign area).

c. Signage for permitted secondary uses occupying the same structure as a principal use. The secondary use's signage shall be subordinate to the principal use.

d. Initial installation of any electronic message centers of any size. Replacement of a previously approved electronic message center is allowed to be approved administratively by staff only if the replacement sign is the exact same dimensions and in the same location.

(b) Buildings with total floor area less than five thousand (5,000) square feet:

(1) City Council approval of a standard sign plan or comprehensive sign plan and a certificate of architectural compatibility are required for any sign installation for buildings with less than five thousand (5,000) square feet including:

a. Initial sign installation (including a change in signage due to change in business name).
b. Major modifications (changes to greater than ten percent (10%) of the initial approved standard sign plan sign area).

c. Signage for permitted secondary uses occupying the same structure as a principal use. The secondary use's signage shall be subordinate to the principal use.

d. Installation of electronic message center of any size. Replacement of a previously approved electronic message center is allowed to be approved administratively by staff only if the replacement sign is the exact same dimensions and in the same location.

(c) Any property with a floor area measuring less than five thousand (5,000) square feet that wishes to submit a comprehensive sign plan is encouraged to do so. Please see Section 15-13 (comprehensive sign plan) for additional permissions available through the comprehensive sign plan.

(Ord. 2019-23 §1)

Sec. 15-43. Permanent sign regulations for nonresidential districts.

(a) Permanent signs—Performance standards. Permanent signs include all those listed in this section in items (1) through (10). All permanent signs shall comply with the area, dimensions and height requirements set forth in this Article and the Black Hawk Commercial Design Guidelines. Permanent signs shall not be allowed to be made of flexible cardboard, vinyl, fabric (excluding awnings), or similar non-rigid material.

Any sign two (2) square feet or larger, visible from twenty (20) feet from the right-of-way that is directed toward and viewable by persons in cars or pedestrians to read the message, shall count toward the total sign area allowed for permanent signs on the property.

(1) Bulletin boards. A maximum of one (1) bulletin board of six (6) square feet encased in a frame possibly having a door for easy access is allowed for all properties. Buildings with street frontage larger than fifty (50) feet will be granted additional six (6) square feet of bulletin board space for every one hundred (100) feet of building frontage after the initial fifty (50) has been used. Bulletin boards are a permanent fixture that is intended to display items temporary in nature such as items for sale, daily specials, special events, or to provide other information. Bulletin board square footage will not count toward the property's total permitted sign area. If more than one (1) bulletin board is placed on the property, those bulletin boards shall be placed at least fifty (50) feet apart from each other.

(2) Freestanding signs.

a. Freestanding signs are permitted for those businesses in the nonresidential districts which do not share a building, a common wall, or common parking area with another business. If two or more businesses share a building, a common wall, or a joint parking area, freestanding signs shall not be permitted, and a joint identification sign shall be used;

b. Only one (1) freestanding sign is permitted for each street frontage, with a maximum of two (2) signs per site;

c. No two (2) freestanding signs shall be closer together than ten (10) feet. In the event that two (2) freestanding signs are located on the same site, they must be separated by a minimum of fifty (50) feet;

d. All freestanding signs shall be set back a minimum of five (5) feet from a right-of-way and limited to twenty-five (25) feet in height;

e. Freestanding signs may be internally or indirectly illuminated.
(3) Electronic message centers. Electronic message centers are subject to the following restrictions:

a. Electronic message centers are encouraged as a form of signs to be used as a replacement for eight and one-half (8.5) x eleven (11) temporary paper advertisements which are not allowed except as in Section 15-43(a)(1). These message centers can be an effective means to eliminate unattractive clutter on windows and doors. Electronic message centers can contain one (1) or multiple messages in form of a slideshow. Electronic message centers do count toward the total sign area allowed for the property.

b. Message hold time. Each message displayed shall remain static for a minimum of eight (8) seconds. All such signs shall have a default mode to prevent the display from malfunctioning in a flashing or intermittent flash on.

c. Transition method. Each electronic message center shall be limited to static messages or streaming recorded video (live video is not allowed) and shall not have movement, or the appearance of optical illusion of movement of any part of the sign structure design, or pictorial segment of the sign. This shall include the movement or appearance of movement of any illumination or the flashing, scintillating or varying of light intensity. The transition duration shall be instantaneous.

d. Each electronic message center shall be equipped with dimming technology that automatically varies the brightness of the electronic sign according to ambient light conditions. Owners of overly bright EMCs will be notified to reduce brightness.

e. The intensity of the light source shall not produce glare, the effect of which constitutes a traffic hazard or is otherwise detrimental to the public health, safety or welfare. Lighting from the message module shall not exceed five hundred (500) NIT (candelas per square meter) between dusk and dawn as measured by the equivalent "percentage of maximum brightness-nighttime" setting on the applicant’s sign controlling software. Applications for sign permits containing an electronic display shall include the manufacturer's specifications and NIT rating. City officials shall have the right to view the technical specifications of the sign to determine compliance, at any time in the future after it is installed.

(4) Joint identification signs.

a. Joint identification signs shall be used for those buildings in nonresidential districts that have two (2) or more businesses sharing a building or a common wall;

b. A maximum of fifty percent (50%) of the joint identification sign shall be used for the anchor sign panel and a minimum of five (5) square feet shall be used for all other business sign panels;

c. Only one (1) joint identification sign is permitted for each street frontage, with a maximum of two (2) signs per site.

d. All joint identification signs shall be set back a minimum of five (5) feet from any right-of-way and limited to twenty (20) feet in height;

e. Joint identification signs may be internally or indirectly illuminated.

(5) Marquee, awning, and canopy signs.

a. Any portion of the marquee, awning or canopy sign that is used for commercial advertisement shall be counted towards the wall sign allowance for that business;
b. All marquee, awning and canopy signs shall be consistent in color, size, material, and letter size with all tenants;

c. Marquee, canopy, awning, and changeable copy signs within multi-tenant/multi-building complexes shall be consistent in color, size, material and letter size with all tenants;

d. Height requirements.

1. Marquee signs are limited to the height of the roofline; canopy signs are limited to the first-floor elevation; and

2. Awning and canopy signs are limited to the first-floor elevation.

e. Setback requirements.

1. Awning and canopy sign setbacks are subject to administrative or, if situation requires, City Council approval; and

2. Marquees must be located on the building and not project more than six (6) feet from the wall of the building on which the marquee is placed.

(6) Projecting signs.

a. The bottom of the sign shall be a minimum of eight (8) feet above the sidewalk or thirteen (13) feet above a vehicular drive area; the sign shall not project more than eight (8) feet from the wall of the building on which the sign is placed. Note that projecting signs may need a license agreement if proposed over a City right-of-way.

(7) Wall signs.

a. Wall signs shall not exceed the height of the roofline; and

b. Wall signs shall not project more than two (2) feet from the wall on which they are placed.

(8) Window signs.

a. In accordance with Section 15-41, window signs such as open/closed, store hours, address, and other similar information that is two (2) square feet or smaller shall be exempt from the total area limitations however any of the allowed following signs shall count toward the allowed sign area on a property;

b. Entryways. Window signs shall not cover more than twenty-five percent (25%) of any door;

c. Any sign or image for advertising purposes inside a building that is or is not attached to or within three (3) feet of a window or door, but is legible from a distance of fifty (50) feet or more beyond the building where the sign is located, will need to be counted toward the total sign area allowed;

d. Window signs can cover only up to twenty-five percent (25%) of any window area;

e. Window signs are limited to the first floor of a building; and

f. Temporary window signs are not allowed.

(9) Other permanent signs.

a. Instructional or "way-finding" signs shall be permitted in addition to other permanent signs when they are of such size and location that satisfy the intended instructional purpose based on their size (not more than four (4) square feet), location and number. Instructional signs shall be permitted without limitation as
to a reasonable number and may include, up to one-half (½) of sign area on the sign, on the name of the business or logos, and must be permanently affixed to the ground or on a structure.

b. Vehicle signs. When vehicles are parked or stored in such a way exceeding the duration of twenty-four (24) hours, the vehicle mounted sign shall be considered a permanent sign for a building or premises and shall not be allowed on the premises.

c. Flags. American, Colorado and City of Black Hawk flags shall be flown in accordance with the United States Flag Code, 36 U.S. Code; flagpoles may be mounted on the fronts of buildings as outrigger poles, not to exceed a forty-five (45) degree angle from vertical (pointed upward), and ten (10) feet in length with a maximum flag size of six (6) feet by eight (8) feet; and flagpoles may not be mounted on a parapet. Flagpoles shall not be greater than seventy-five (75) feet in height. If mounted on top of a building, flagpoles shall not be greater than twenty-five (25) feet in height. Flags do not count toward allowed sign area. Flags desired to be larger must be reviewed and approved through the comprehensive sign plan process by City Council.

(10) Permanent sign allowed without permit.

a. Any sign two (2) square feet or larger visible from twenty (20) feet from any street or public sidewalk and is not visible to the general public on the right-of-way shall not count toward the maximum sign area on the property, and however, must be thirty-two (32) square feet or less.

Sec. 15-44. Temporary sign regulations for nonresidential districts.

(a) Temporary signs—Performance standards. Temporary signs shall include all signs used only temporarily and those that are not permanently mounted.

(1) Temporary signage is subject to the regulations as described below:

a. Temporary signs placed inside the bulletin board on the property do not count toward the temporary sign area allowed in this section;

b. Temporary signs shall not exceed the size limitations provided in this section.

(b) Temporary signs requiring City Council approval:

(1) Community event signs. Temporary signs used for announcing community events and activities. Use of these signs is limited to notification of public events or other occurrences of public interest and are subject to the following restrictions:

a. Community event signs are to be placed at the designated community event sign locations as determined through City Council approval;

b. Community event signs are to be placed no more than three (3) weeks prior to the event and must be removed within three (3) days after the event;

c. Not more than five (5) community event signs may be placed within the City to advertise any one (1) event;

d. Each community event sign shall be limited to thirty-two (32) square feet;
e. No community event sign shall be erected over eight (8) feet in height if placed as freestanding sign.

(c) Temporary signs requiring administrative approval and permit:

(1) Large temporary signs. Large temporary signs which exceed the restrictions in Section 15-44(d)(5) require administrative approval and permit and are subject to the following restrictions:

a. Temporary signs shall be displayed only on the property to which they pertain;

b. Temporary signs shall not exceed thirty-two (32) square feet per face or over twelve (12) feet above street grade in height;

c. There shall be not more than four (4) temporary signs on each property;

d. Temporary signs shall not be illuminated;

e. Temporary signs may be displayed for the duration of a construction project or transaction and they shall be removed upon completion of the project or transaction.

(d) Temporary signs allowed without a permit:

(1) Election season signs. These signs are allowed thirty (30) days prior to a scheduled election, and must be removed three (3) days immediately following the election as defined in this Article; no more than one (1) sign for each national, State or local ballot question or candidate is permitted on a non-residential parcel. Such signs shall not exceed four (4) square feet per face, not be taller than four (4) feet, and be on private property.

(2) Holiday and seasonal decorations. Holiday string lights or colored tree lights may be used for decorative purposes to coincide with the holiday season and shall be installed according to the National Electrical Code. Holiday string lights or colored tree lights may be installed beginning on October 1 and must be removed no later than February 15 of the following year. Holiday string lights or colored tree lights may be illuminated during the holiday season, which begins on November 1 and continues to February 15 of the following year. All other holiday/seasonal decorations may be used twenty (20) days prior to a national holiday or seasonal change and shall be removed ten (10) days after the national holiday or seasonal change. Illumination is allowed. Flashing lights are discouraged, but not prohibited.

(3) Landscape lighting. Lighting of/on landscaping is allowed year-round on public property on live landscaping or on or above a hardscape. The same type of lighting is allowed on private property if a certificate of architectural compatibility is approved by City Council in accordance with Section 16-368 of the Black Hawk Municipal Code.

(4) Building permits. Signs announcing the City or State approved building permits on the property are exempt from permit requirements. The permit should be in a noticeable location that is visible to a visiting inspector.

(5) Small temporary signs. Small temporary signs do not require a permit and shall be subject to the following restrictions:

a. Temporary signs shall not exceed six (6) square feet per face and the top of the sign shall not be higher than ten (10) feet above street grade;

b. There shall be not more than two (2) temporary signs on any property;
Sec. 15-44. Illumination.

(a) Color of light.

(1) Signs visible from any nonresidential district are subject to City Council approval for light color. Council may approve a maximum of three (3) light colors in addition to white colored illumination for signs visible from residential areas, provided that the proposed illumination is of a low intensity and will have a minimal visual impact on the residential area. An applicant proposing any illuminated sign visible from a residential area, which exhibits light color other than white, must notice all residents within direct visual proximity to the sign as to the type and amount of illumination proposed. Said notice shall provide information sufficient to describe the visual impact of the sign, including but not limited to color renderings describing the illumination and sign type, size and location. This notice shall also include the date of public hearing before Council for the sign proposal.

(2) Signs in nonresidential districts not visible from residential areas may exhibit any combination of light color, provided that no sign illumination conflicts with any traffic signal and are subject to City Council approval. Electronic message center (EMC) signs shall not be visible from a residential area unless specifically approved by City Council in accordance with the notice provision in Section 15-45(a)(1).

(b) Type of illumination.

(1) Direct illumination may be permitted in nonresidential districts. All signs containing direct illumination shall be subject to approval by Council. Direct illumination should be used as an accent feature to the overall sign design. Signs shall not be illuminated by direct illumination such that light spills over onto adjacent properties.

(2) Indirect illumination shall be limited to the minimum amount of light needed to light the face of the sign. All fixtures used for indirect illumination shall be screened from view. No light from a fixture used for indirect illumination may cause hazardous glare for motorists, pedestrians or bicyclists. The beam pattern of a light source used for indirect illumination shall be the tightest, most controlled pattern achievable. The use of templates to control the beam pattern is highly encouraged.

(3) Internal illumination. Fully illuminated plastic sign boxes with internal light sources are discouraged. Halo illumination is encouraged. Opaque letters or designs, which are halo lit, shall be mounted to a building face. The source of illumination shall not be visible. All mounting fixtures, wires, tubes, etc., shall be disguised or painted from view to the greatest extent possible.

(4) Neon may be used in small quantities to enhance the overall graphic effect of a sign. Neon should be used as a graphic art/design feature of the sign. Sign designers incorporating neon are encouraged to use designs that promote and encourage the entertainment uses allowed in the zoning districts in which neon is an acceptable sign element. Neon tubing should be used as an
accent feature to the overall sign design. The use of neon is subject to review and approval by City Council.

(Ord. 2019-23 §1)


Division 3
History Appreciation Recreation Destination District

Sec. 15-51. General.

(a) This Division addresses those signs which are allowed within a subset of nonresidential districts of the City, those properties which are within the History Appreciation Recreation Destination (HARD) zone district.

(b) This Division only applies to those properties zoned HARD per the official zoning map of the City of Black Hawk, as adopted by City Council.

(c) The regulations herein are in addition to all other regulations of this Section 15 (Sign Code). In the event of any conflict between this Division 3 and another regulation, the regulations of this Division 3 shall prevail.

(d) Signs in the HARD District shall be reviewed, as specified by these regulations, by the HARD District Sign Committee. The Committee shall be comprised of the City Manager, the Planning Department Director, and a third member designated by the City Manager.

(e) Types of signs allowed in the HARD District:

(1) Permanent signs. Awning, changeable copy, canopy, electronic message centers, freestanding, marquee, joint identification, blade, wall, bulletin boards and window signs.

(2) Temporary signs. Community event signs, temporary HARD signs, and other temporary signs (election signs, holiday and seasonal decorations, and limited duration signs).

(Ord. 2019-23 §1)

Sec. 15-52. Permanent sign permit approval.

(a) The owner of any building, group of buildings, public areas, or recreational site or trail located in the HARD District is required to submit a comprehensive sign plan application and a certificate of architectural compatibility application prior to issuance of a sign permit for a given property. The HARD District Sign Committee shall review any proposals prior to City Council. City Council approval of a comprehensive sign plan and a certificate of architectural compatibility are required prior to any action listed below in Section 15-52(a)(1) through (4). The regulations governing a comprehensive sign plan and certificate of architectural compatibility can be found in Section 15-13 (comprehensive sign plan) of this Chapter and Section 16-368 (City Council design review and compatibility process) of the Black Hawk Municipal Code, respectively. Approval is required for:

(1) Initial sign installation (including a change in signage due to change in business name).

(2) Major modifications (changes to greater than ten percent (10%) of the initial approved comprehensive sign plan sign area).

(3) Signage for permitted secondary uses occupying the same structure as a principal use. The secondary use's signage shall be subordinate to the principal use.

(4) Initial installation of any electronic message centers of any size. Replacement of a previously approved electronic message center is allowed to be approved administra-
tively by staff only if the replacement sign is the exact same dimensions and in the same location.

(b) HARD District Sign Committee review. Within thirty (30) days of receipt of a complete application, the HARD District Sign Committee shall review and recommend approval or denial of the application to City Council or the Director, as the case may be. The application shall be recommended for approval if:

(1) Implementation of the sign plan will provide signage that is compatible with the surrounding development and designed with a high-quality appearance;

(2) Implementation of the sign plan will result in architecture and graphics of a scale appropriate for the surrounding neighborhood and development area;

(3) Implementation of the sign plan will provide signage consistent with the architecture and site plan characteristics of the proposed or existing project;

(4) Implementation of the sign plan will be materially beneficial in achieving the goals and objectives of the City's standards that relate to community design and aesthetics; and

(5) Implementation of the sign plan will be materially beneficial in achieving the goals and objectives cited in the purpose of the Sign Code.

(Ord. 2019-23 §1)

Sec. 15-54. Temporary sign regulations for the HARD District.

(a) Temporary signs—Performance standards. Temporary signs shall include all signs used only temporarily and those that are not permanently mounted.

(1) Temporary signage is subject to the regulations as described below:

   a. Temporary signs placed inside the bulletin board on the property do not count toward the temporary sign area allowed in this section; and

   b. Temporary signs shall not exceed the size limitations provided in this section.

(b) Temporary signs requiring HARD District Sign Committee review and City Council approval:

   (1) Community event signs. Temporary signs used for announcing community events and activities. Use of these signs is limited to notification of public events or other occurrences of public interest and are subject to the following restrictions:

      a. Community event signs are to be placed at the designated community event sign locations as determined through City Council approval;

      b. Community event signs are to be placed no more than three (3) weeks prior to the event and must be removed within three (3) days after the event;

      c. Not more than five (5) community event signs may be placed within the City to advertise any one (1) event;

      d. Each community event sign shall be limited to thirty-two (32) square feet; and

(Ord. 2019-23 §1)
e. No community event sign shall be erected over eight (8) feet in height if placed as a freestanding sign.

(c) Temporary signs requiring HARD District Sign Committee review and administrative approval and permit:

(1) Temporary HARD signs. Temporary HARD signs are subject to the following restrictions:

a. Temporary signs may be coordinated and placed amongst a grouping of buildings;

b. Temporary signs may be placed on a fence or wall;

c. Temporary signs shall not exceed an area calculated as eight (8) feet times the length of the lot;

d. Temporary signs may be illuminated; and

e. Temporary signs may be displayed for the duration of the construction project or development and they shall be removed upon completion of the project or development.

(d) Temporary signs allowed without a permit.

(1) Election season signs. These signs are allowed thirty (30) days prior to a scheduled election, and must be removed three (3) days immediately following the election as defined in this Article; no more than one (1) sign for each national, State or local ballot question or candidate is permitted on a non-residential parcel. Such signs shall not exceed four (4) square feet per face, not be taller than four (4) feet, and be on private property.

(2) String lights. String lights or colored tree lights may be used for decorative purposes year-round and shall be installed according to the National Electrical Code. Flashing lights are discouraged, but not prohibited.

(3) Landscape lighting. Lighting on landscaping is allowed year-round on public property.

(4) Building permits. Signs announcing the City or State approved building permits on the property are exempt from permit requirements. The permit should be in a noticeable location that is visible to a visiting inspector.

(5) Small temporary signs. Small temporary signs do not require a permit shall be subject to the following restrictions.

a. Temporary signs shall not exceed six (6) square feet per face and the top of the sign shall not be higher than ten (10) feet above street grade;

b. There shall be not more than two (2) temporary signs on any property;

c. Temporary signs shall be displayed only on the property to which they pertain;

d. Temporary signs shall not be illuminated;

e. Temporary signs may be displayed for the duration of a construction project or transaction and they shall be removed upon completion of the project or transaction.

(Ord. 2019-23 §1)
Sec. 15-55. Illumination.

All illumination in the HARD District shall follow the standards and regulations of illumination for nonresidential districts. See Section 15-45 of the Municipal Code.
(Ord. 2019-23 §1)

ARTICLE IV

Sign Regulations

Sec. 15-61. Building frontage measurements and sign area calculations.

Building with one street building frontage

Street Frontage A = 50 feet

Example A: Standard sign plan

Total building frontage = Length of Frontage A = 50 feet.

Maximum frontage length allowed = 128 feet (for details see Section 15-41(d)).

Total sign area awarded = Maximum frontage length allowed = 128 square feet.

Example B: Comprehensive sign plan (for details see Section 15-13)

Total frontage = Length of Frontage A = 50 feet.

Maximum frontage length allowed = 128 feet.

Total sign area awarded = Maximum frontage length allowed × 1.35 = 128 feet × 1.35 = 172.8 square feet.
Example C: Comprehensive sign plan proposing electronic message centers (for details see Section 15-13)

Total frontage = Length of Frontage A = 50 feet.

Maximum frontage length allowed = 128 feet.

Total sign area awarded = Maximum frontage length allowed × (1.35 + 1.35) = 128 feet × 1.70 = 217.6 square feet.

Building with multiple frontages

Example A: Standard sign plan

Maximum frontage length allowed = Street Frontage B + Street Frontage C = 200 feet + 175 feet = 375 feet.

Total sign area awarded = 375 square feet (See Section 15-41(d)).

Example B: Comprehensive sign plan (for details see Section 15-13)

Maximum frontage length allowed = Street Frontage B + Street Frontage C = 200 feet + 175 feet = 375 feet.

Total sign area awarded = Total building frontage × 1.35 = 375 feet × 1.35 = 506.25 square feet.

Example C: Comprehensive sign plan proposing electronic message centers (for details see Section 15-13)

Maximum frontage length allowed = Street Frontage B + Street Frontage C = 200 feet + 175 feet = 375 feet.
Total sign area awarded = Total building frontage x (1.35 + 1.35) = 375 feet x (1.35 + 1.35) = 375 feet x 1.70 = 637.5 square feet.

(Ord. 2019-23 §1)

Sec. 15-62. Definitions.

The following words and phrases, when used in this Chapter, shall have the meanings respectively ascribed to them:

\textit{Animated sign} means any sign or part of a sign which changes physical position by any movement or which gives the illusion of such change of physical position - Prohibited Sign.

\textit{Awning (permanent sign)} means a movable or non-movable shelter supported entirely from the exterior wall of a building and of a type which may be retracted against the face of the supporting building - Permit Required.

\textit{Banner (temporary sign)} means a sign made of lightweight fabric or similar material mounted to a structure.

\textit{Billboard} means a flat surface, either free-standing, wall-mounted or a wall itself, on which signs are posted advertising a business, product or service not available on the premises - Prohibited Sign.

\textit{Blade sign (projecting object) (permanent sign)} means a sign that projects from a building and contains not more than two (2) distinguishable sides intended as sign face. Both sides are counted toward sign area.

\textit{Building code} means the building code of the City, as adopted by the City Council, including such codes as may be adopted in the future.

\textit{Building frontage} means the horizontal linear dimension of that side of a building which is adjacent to a dedicated street and architecturally finished to match the principal building facade, or which has a public entrance to the building and is adjacent to a street or parking area with the same ownership as the principal use or other circulation area open to the general public. In shopping centers, any outside architecturally finished wall of a first-floor use shall be considered a building frontage.

\textit{Bulletin boards (permanent sign)} are signs used by businesses to place temporary paper-type signs or information notices for their customers to read.

\textit{City Manager} which may include the Planning Department Director or other designee, means the person charged with the administration and enforcement of this Chapter, or his or her duly authorized representative. The City Manager or his or her designee shall be charged with the administration and enforcement of this Chapter.

\textit{Community event (temporary sign)} means a temporary poster which advertises a community-related activity or event, conducted by a governmental, fraternal, religious or nonprofit organization.

\textit{Contractor signs (temporary sign)} are development signs announcing construction on a property and containing the name of the contractor and date of completion - Permit Required.

\textit{Development sign} means a temporary sign announcing real estate, subdivision, development, construction or other improvement, sale or lease of a property by a builder, contractor, or other person furnishing services, materials or labor to said premises.

\textit{Election season signs} means a sign used during the election season, which is defined as commencing thirty (30) days prior to a scheduled election, and terminating three (3) days immediately following the election.
Electronic message center means a sign, including television screens, that is capable of displaying words, symbols, figures, or images that can be periodically changed by manual, electronic, remote or automatic means.

Exempt sign is a sign which requires no permit or permit fee.

Exterior sign is any sign that does not meet the definition of an interior sign.

Grade means the average elevation of the ground at the base of the sign, as measured from the finished grade of the sidewalk and/or street.

Graphics area is the area of the marquee sign that displays text and images.

Halo illumination means opaque letters or designs set out from a building or sign face and lit by illumination from behind the letters.

Historical signs (permanent sign) means signs that were originally placed on a building prior to the 1900s that can be documented in historical photographs or records - Exempt.

Holiday/seasonal decorations (temporary) are decorations installed on the exterior of a building and shall include strings of colored lights, decorations made of wood, canvas or cloth with vinyl, plastic or painted designs depicting the holiday or season for which the decoration is being displayed. These signs are temporary decorations or displays customarily associated with national, local or religious celebrations or season changes. Seasonal changes are: Spring - March 21; Summer - June 21; Fall - September 1; Winter - December 21 - Exempt.

Illumination, direct means lighting by means of an unshielded light source, including neon tubing, which is effectively visible as part of the sign, where light travels directly from the source to the viewer’s eye. Direct illumination should be used as an accent feature to the overall sign design. Signs shall not be illuminated by direct illumination such that light spills over onto adjacent properties or streets and sidewalks.

Illumination, indirect means lighting of the surface of the sign by a light source that is directed at the sign surface in such a way as to illuminate the entire building façade on which a sign is displayed, but does not include lighting that is primarily used for purposes other than sign illumination, including without limitation, parking lot lights or lights inside a building that may silhouette a window sign but that are not primarily installed to serve as inside illumination of a sign. Indirect illumination shall be limited to the minimum amount of light needed to light the face of the sign. All fixtures used for indirect illumination shall be screened from view. No light from a fixture used for indirect illumination may cause hazardous glare for motorists, pedestrians or bicyclists. The beam pattern of a light source used for indirect illumination shall be the tightest, most controlled pattern achievable. The use of templates to control the beam pattern is highly expected.

Illumination, internal means lighting by means of a light source that is within a sign having a translucent foreground or background and silhouettes opaque letters or designs or that is within letters or designs that are themselves made of translucent material. This term shall also extend to and include halo illumination.

Individual detached sign (permanent sign) means a sign supported by poles, uprights or any sign located on the ground (except portable signs), provided that no part of the sign is attached to any part of a building. The sign must be located on the same property as the use in which it is intended for - Permit Required.

Instructional signs (permanent sign) are those commonly associated with and limited to information and instructions relating to the permitted use on the lot on which the sign is located. These signs include such signs as "restrooms,"
"no smoking," "no solicitors," "wheelchair entrance," "exit" and similar signs - Permit Required.

**Interior signs** are signs placed within a building area which are not visible from the exterior of the building and which are subject to the regulations of the building and electrical codes. Signs placed within a building which may be visible from the exterior of the building, which are not specifically directed to the exterior of the building, shall not be considered an exterior sign. Interior signs are not subject to this Chapter; see Section 15-43(10) - Exempt.

**Joint identification sign (permanent sign)** means a sign which serves as a common or collective identification to two (2) or more businesses located within the same building, or which may share a common wall or for two (2) or more businesses located within a jointly used area, which buildings are in close proximity to one another. Such signs may contain a general identification for a shopping center and similar developments, and may in some cases contain a directory to individual uses as an integral but clearly secondary part of the sign - Permit Required.

**Maintenance** means the replacing, repairing or repainting of a portion of a sign or sign structure and watering, weeding, mowing, trimming and similar activities on any landscaped area on which the sign is located.

**Marquee (permanent sign)** means a rigid, roof-like structure attached to a wall or walls of a building or structure and supported entirely by the building or structure - Permit Required.

**Memorial, cultural or commemorative signs (permanent sign)** are tablets or plaques which are cut into a masonry surface, inlaid as part of a building or mounted flat against the wall of the building - Permit Required.

**Motor vehicle signs (permanent sign)** are signs displayed on motor vehicles that are being operated or stored in the normal course of a business, such as signs indicating the name of the owner or business and are located on delivery trucks, rental trucks and the like are exempt; provided that the primary purpose of such vehicles is not for the display of signs; and provided that the vehicles are parked or stored in areas appropriate to their use as vehicles. Stored vehicles may not be illuminated. Not subject to permit and fees. Shall not count against sign area.

**Nonconforming sign** means any sign erected prior to the enactment of this Chapter, which does not conform to all the applicable regulations and restrictions of this Chapter.

**Off-premises sign** means a billboard or general outdoor advertising device which advertises or directs attention to a business, commodity, service or activity conducted, sold or offered elsewhere than on the property upon which the sign is located, which sign is prohibited.

**On-premises sign** means a sign which advertises goods, services, facilities or events available on the premises upon which the sign is located.

**Owner** means a person, corporation or other legal entity recorded as such on the records of the County Clerk and Recorder, including any duly authorized agent of the owner or a person having a vested or contingent interest in the property in question.

**Parking and private traffic directional signs** are signs which give parking or traffic directions into, from or within a lot - Exempt.

**Permanent sign** means any sign with a structure that is permanently placed or affixed to a structure or in the ground.

**Permit required sign** is a sign which requires a permit and permit fee prior to the installation of the sign.
Projecting object (blade sign) (permanent sign) means a sign which is supported by a wall, and the faces of which project at an approximate angle of ninety (90) degrees from that wall - Permit Required.

Property means a combination of adjacent lots or parcels under a common ownership upon which may sit one (1) or multiple buildings.

Public notice signs (temporary sign) means a sign used for the advertising of a public hearing or meeting of a governmental body, including boards, commissions, special districts, etc.

Public signs (permanent sign) are those required or specifically authorized for a public purpose by the City Manager or by any statute or ordinance. Public signs are informational in nature and include signs that direct the public to recreational and cultural interest areas; direct the public to facilities and amenities; may include "Welcome to the City" signs; and identify the jurisdiction by name and/or logo.

Roof sign means a sign erected upon or extending above the roofline of a building or structure, which sign is prohibited.

Roofline means the highest point on any building where an exterior wall encloses usable floor area, excluding floor area provided for housing mechanical equipment. The term roofline shall also include the highest point on any parapet wall required by the building code.

Secondary uses are uses identified as permitted uses, individual businesses or tenants located within the same principal structure.

Sight distance triangle means, on corner lots and where streets, alleys or driveways intersect each other, a triangle measured from the point of intersection of the curb flow lines abutting streets and/or alleys and driveways fifteen (15) feet along each such curb flow line. This provision applies only to individual detached signs.

Sign means an object, device or any part thereof situated outdoors or indoors which is used to advertise, identify, display, direct or attract attention to an object, place, person, institution, organization, business, product, service, event or location by any means including words, letters, figures, designs, logos, fixtures, colors, motion, illumination or projected images. If for any reason it cannot be readily determined whether or not an object is a sign, the City Manager or designee shall make such determination.

Sign face or display surface means the surface of a sign upon, against or through which the message is displayed or illustrated. The sign face includes any architectural embellishment or background material or color forming an integral part of the display or used to differentiate the sign from its surroundings. The area of a sign shall be the smallest possible rectangle or rectangles enclosing the extreme limits of the display surface. For signs involving individual letters or symbols placed flat against a building, the area of the sign shall be that of the smallest possible rectangle or rectangles enclosing all the letters or symbols used to convey the message of the sign and shall include the open space between the letters or symbols and the entire display surface. Applicants must show these dimensions on a plan for a sign plan or sign permit.

Sign height is the height of any sign and shall be the distance between the topmost portion of the sign or the structure supporting the sign or any architectural embellishments to the sign, and the average grade level at the base of the sign or sign support.

Sign spinner means an individual who holds, flips, or spins a portable sign containing a commercial message at a location intended to attract the attention of motorists or pedestrians. Sign spinners are defined by the possession of a portable sign with a commercial message, re-
gardless of whether or not the sign is being flipped, spun, or otherwise moved in a manner intended to attract attention.

*Sign structure* means any supports, uprights, braces or framework of the sign, excluding the sign face.

*Signable area* means that portion of the building facade unbroken by doors or windows upon which a sign is or may be located and is calculated by selecting a continuous facade, then drawing the largest possible imaginary rectangle unbroken by doors or windows and computing the square footage of this rectangle.

*Special event signs (temporary sign)* means signs that announce and/or give directions to yard or garage sales, and includes similar signs for the events of nonprofit groups. Special events signs are intended to be temporary.

*Store front* means any boundary line of a private lot or parcel of land that coincides with the right- of-way of a public street or alleyway.

*Street address and identification signs (permanent sign)* are signs which include only the name or professional title of the occupant, name of the building, address of the premises or hours of operation.

*Temporary signs* mean signs that are placed for a specified length of time and may include construction signs, development signs, grand opening signs, political signs, real estate signs, special event signs, etc.

*Temporary HARD signs* mean signs in the HARD District that are placed for a specified length of time and may include construction signs, development signs, grand opening signs, political signs, real estate signs, special event signs, etc.

*Three-dimensional object sign* is a projecting object sign that contains a cubic volume to the sign and has more than two (2) distinguishable sides dedicated towards advertisement. The volume of a three-dimensional object sign shall be calculated as the volume within a rectilinear form that could be constructed to enclose the primary form of the sign. Minor sign elements may project beyond the primary boundaries of this volume at the discretion of the Council. Minor design elements are those parts of the sign which add to the design quality without adding significantly to the perceived volume and mass of the sign.

*Wall art (permanent sign)* is art painted on a side of a building that in no way identifies a product, service or business and is not counted as sign area. The purpose of wall art is to provide art with a historical implication, which adds to the visual character of the community - Permit Required.

*Wall sign (permanent sign)* means a sign attached to or painted on a wall of a building, the display surface of the sign being parallel to the wall of the building to which the sign is attached - Permit Required.

*Window exterior sign* means a sign within a building displaying the logo or name of the building that is specifically intended to advertise to the exterior of the building and is not considered an interior sign, and shall be included in the total sign area for the property.

*Window sign (permanent sign)* means a sign that is applied or attached to a window or door or a sign located near a window or door within a building for the purpose of being visible to and read from the outside of the building - Permit Required.

(Ord. 2019-23 §1)

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ARTICLE I

General Provisions

Sec. 16-1. Short title.

The ordinance herein codified shall be known as and may be sited and referred to as the "zoning ordinance of the City of Black Hawk, Colorado." (Ord. 94-11 §1, 1994)

Sec. 16-2. Purpose.

The ordinance herein codified is drawn in accordance with the City's 1993 Comprehensive Plan, Adopted Plans for Specific Areas and the Design Standards for the City of Black Hawk developed for this National Landmark District. The ordinance is designed to promote the health and general welfare of the citizens of Black Hawk as well as visitors to the City; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to ensure compatibility between the residential, commercial and gaming uses within the City; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to promote energy conservation and the use of solar energy; to lessen congestion in the streets; and to ensure that citizens and visitors alike are safe from fire, flood waters and other dangers. The ordinance herein codified is drawn with reasonable and able consideration, among other things, as to the character of each zone district and its particular suitability for specific uses and with due recognition of the importance of conserving the value of buildings and property and encouraging the most appropriate uses of land throughout the City. (Ord. 94-11 §1, 1994)

Sec. 16-3. Authority.

The ordinance herein codified is adopted pursuant to the authority of the City Charter. (Ord. 94-11 §1, 1994)

Sec. 16-4. Jurisdiction.

Provisions of this Chapter shall be effective within the corporate boundaries of the City. (Ord. 94-11 §1, 1994)

Sec. 16-5. Effective date.

The provisions in this Chapter were originally adopted on May 7, 1991 (May 1991 ordinance). A comprehensive revision of the ordinance herein codified was adopted on April 13, 1994, to implement the update of the City's Comprehensive Plan, adopted by Resolution #93-10. (Ord. 94-11 §1, 1994)

Sec. 16-6. Relation to the existing zoning, Historic Preservation Commission and floodplain ordinances.

To the extent that the provisions of this Chapter are the same in substance as the previously adopted provisions that they replace in the City's zoning, Historic Preservation Commission and floodplain ordinances, they shall be considered as continuations thereof and not as new enactments, unless otherwise specifically provided. Any situation that did not constitute a lawful, nonconforming situation under a previously adopted zoning ordinance does not achieve lawful nonconforming status under this Chapter merely by the repeal of the previously adopted ordinances. (Ord. 94-11 §1, 1994; Ord. 2009-13 §2)

Sec. 16-7. Relationship to the Comprehensive Plan and other adopted plans.

It is the intent of the Board of Aldermen that this Chapter implement the planning policies adopted by the Board of Aldermen as reflected in the Comprehensive Plan and other related plans and planning documents. While the Board of Aldermen reaffirms its commitment that this
Chapter and any amendment to it be in conformity with the adopted planning policies, the Board of Aldermen hereby expresses its intent that neither this Chapter nor any amendment to it may be challenged on the basis of any alleged nonconformity with any planning document. (Ord. 94-11 §1, 1994)

Sec. 16-8. Severability.

Should any section or provision of this Chapter be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Chapter as a whole or any part thereof other than the part so decided to be unconstitutional or invalid. (Ord. 94-11 §1, 1994)

Sec. 16-9. Application of regulations.

Except as hereinafter provided:

(1) No building or structure shall be erected and no existing building or structure shall be moved, altered or extended, nor shall any land, building or structure be used for any purpose or for any manner other than as provided for among the uses hereinafter listed in the district regulations for the zone district in which such land, building or structure is located.

(2) No building or structure shall be erected nor shall any existing building or structure be moved, altered or extended nor shall any open space surrounding any building or structure be encroached upon or reduced in any manner, except in conformity with the dimensional regulations, district development standards and supplementary regulations or other provisions hereinafter provided in the district regulations for the district in which such building, structure or open space is located.

(3) No yard, setback, frontage or other open space on one (1) lot shall be considered as providing a yard, setback, frontage or open space for a building on any other lot for the purpose of complying with the provisions of this Chapter. (Ord. 94-11 §1, 1994)

Sec. 16-10. Operation.

(a) In the application and interpretation of the provisions of this Chapter, the provisions of this Chapter shall be held to be the minimum requirements. Where regulations for any overlay, zoning district or specific regulations of a particular zoning district or general regulations of this Chapter differ for a specific condition, the more restrictive shall apply, except as approved and documented within a Planned Unit Development.

(b) This Chapter is not intended to repeal, abrogate, annul or in any way impair or interfere with existing provisions of other laws or with existing provisions of private agreements. Where this Chapter imposes a lesser restriction than that imposed by such existing provisions of law, contract or deed, the provisions of such law, contract or deed shall control.

(c) The Planning Director or authorized representative shall be charged with the clarification of the intent of all provisions of this Chapter. (Ord. 94-11 §1, 1994)

Secs. 16-11—16-20. Reserved.

ARTICLE II

Definitions

Sec. 16-21. Definitions generally.

For the purpose of this Chapter, certain terms and words are defined as set forth in this Section.
Sec. 16-22. General meanings.

Words used in the present tense include the future; words in the singular include the plural, and words in the plural number include the singular; building includes structure; use includes arranged, designed or intended to be used; occupied includes arranged, designed or intended to be occupied; shall is mandatory and not directory. The word person includes a corporation, partnership or other entity capable of owning, leasing, developing or managing property.

Sec. 16-23. Effectiveness of definitions.

The definitions contained in this Article shall replace and govern over any other definition of the same word or phrase as the same is defined in any other section in this Chapter.

Sec. 16-24. Definitions.

The following words and phrases, when used in this Chapter, shall have the meanings respectively ascribed to them:

**Adult arcade** means an establishment where, for any form of consideration, one (1) or more still or motion picture projectors, slide projectors or similar machines or other image producing machines, for viewing by five (5) or fewer persons each, are used to show films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**Adult bookstore, adult novelty store or adult video store** means:

a. A commercial establishment which (1) devotes a significant or substantial portion of its stock-in-trade or interior floor space to, (2) receives a significant or substantial portion of its revenues from, or (3) devotes a significant or substantial portion of its advertising expenditures to, the promotion of the sale, rental or viewing (for any form of consideration) of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by the depiction of specified sexual activities or specified anatomical areas.

b. An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such establishment from being categorized as an adult bookstore, adult novelty store or adult video store so long as the provisions of Subparagraph a. are otherwise met.

**Adult cabaret** means a nightclub, bar, restaurant or other commercial establishment which regularly features: (a) persons who appear nude or in a state of nudity; or (b) live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

**Adult motel** means a motel, hotel or similar commercial establishment which: (a) offers public accommodations, for any form of consideration, and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified anatomical areas or specified sexual activities and which advertises the availability of this sexually oriented type of material by means of a sign visible from the
public right-of-way or by means of any off-premises advertising including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; (b) offers a sleeping room for a period of time less than ten (10) hours; or (c) allows a tenant or occupant to sub-rent a sleeping room for a time period of less than (10) hours.

Adult motion picture theater means a commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions depicting or describing specified anatomical areas or specified sexual activities are regularly shown for any form of consideration.

Adult theater means a theater, concert hall, auditorium or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by exposure of specified anatomical areas or by specified sexual activities.

Alley means a public right-of-way within a block upon which the rear of building lots generally abut; its use is for secondary access to the lot and for service purposes.

Alteration means any act or process which changes one (1) or more of the exterior architectural features of any structure.

Amusements mean an establishment or enterprise for the purpose of amusing or entertaining persons, including by way of example, but not in limitation, museums, bowling alleys, pool halls, arcades, dance-halls, puppet shows, theaters, cinemas, concerts, stage shows, roller and ice skating rinks, sport facilities and recreational facilities, whether such establishments be indoor or outdoor, for profit or not for profit, or in conjunction with another use on the premises. However, amusements shall not include devices for amusement and entertainment, such as jukeboxes, pool tables, coin-operated games, pinball machines or television and radio where such devices are clearly incidental and subordinate to the principal use of the premises.

Architectural projection means roof overhangs, mansards, unenclosed exterior balconies, marquees, canopies, pilasters and fascias, but not including signs.

Area of shallow flooding means an area located within the area of special flood hazard with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate.

Area of special flood hazard means that land in the floodplain within the City subject to a one percent (1%) or greater chance of flooding in any given year. The area of special flood hazard includes those areas designated as the floodway flood fringe.

Arterial street means any state or federal numbered highway, or any other street having a right-of-way width greater than sixty (60) feet.

Base flood means the 100-year return frequency flood or the flood having a one percent (1%) chance of being equaled or exceeded in a given year.

Basement means that portion of a building as defined in the latest edition of the International Building Code, adopted by the City.

Bed and breakfast means a residential dwelling unit that provides sleeping accommodations for hire, for thirty (30) days or less, on a day-to-day basis, with one (1) or more meals per day included, at which an owner, manager or lessee of the property
resides on the premises. Such use shall not include residential dwelling units with two (2) or more rental rooms or facilities which include retail or commercial activities of any kind.

_Board of Aldermen_ means the Board of Aldermen of the City of Black Hawk, Colorado.

_Boarding house_ means a building, other than a hotel or motel, where, for compensation and by prearrangement, for periods of thirty (30) days or more, lodging, meals or both are provided for three (3) or more persons who are not parents or children of the primary occupants.

_Building_ means any structure used or intended for supporting or sheltering any use or occupancy.

_Building accessory_ means a building devoted exclusively to an accessory use as herein defined and not attached to a principal building by any roofed structure.

_Building height_ means the vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. The reference datum shall be selected by either of the following, whichever yields a greater height of building:

a. The elevation of the highest adjoining sidewalk or ground surface within a five-foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than ten (10) feet above the lowest grade.

b. An elevation ten (10) feet higher than the lowest grade when the sidewalk or ground surface described in Subparagraph a. above is more than ten (10) feet above lowest grade.

The height of a stepped or terraced building is the maximum height of any segment of the building. The height limitations of this Chapter shall not apply to cupolas, chimney ventilators, skylights, water tanks or necessary mechanical appurtenances usually installed above the roof level. An antenna may exceed the maximum applicable building height, provided that the total height does not exceed five (5) feet plus twice the distance to the nearest property line.

_Building nonconformance_ means a building, structure or portion thereof built prior to the effective date of the ordinance codified herein or any amendment thereto and conflicting with the provisions of this Chapter applicable to the zoning district in which it is situated.

_Bulk storage_ means exposed outside storage of sand, lumber, coal or other bulk materials and bulk storage of liquids in tanks (except underground as an accessory use).

_Campground:_ Any area that is occupied or intended or designed or improved for occupancy by transients (no permanent residency is allowed) using recreational vehicles, travel trailers, tent trailers, or tents for temporary dwelling, lodging, or sleeping purposes wherein sites are offered for the use of the public or members of any organization for no longer than fifteen (15) days.

_Channel_ means a natural or artificial watercourse or drainway of perceptible extent with definite bed and banks to confine and conduct continuously or periodically flowing water.

_Commercial accommodations_ mean a building or group of buildings containing guest units providing transient accommodations to the general public for compensation and as an accessory use not more than a single dwelling unit. _Commercial accommo-
**Definitions**

*Accommodations* includes hotel, motel, tourist home, boarding house, lodging house, bed and breakfast units and dormitories.

*Commercial vehicles* mean vehicles of more than five (5) tons of capacity.

*Common open space* means a parcel or parcel of land, an area of water or a combination of land and water, within the site designated for a planned unit development designed and intended primarily for the use or enjoyment of residents, occupants and owners of the planned unit development.

*Courts* mean a space, open and unobstructed to the sky, bounded on three (3) or more sides by walls of a building.

*Day care home* means a facility licensed by the County or the State which is maintained for a whole or part of a day for the care of more than two (2) children under the age of sixteen (16) years not related to the owner, operator or manager thereof, which facility is operated with or without compensation for such care. A *small day care home* is a day care home for less than seven (7) children. A *large day care home* is a day care home for seven (7) or more children.

*Design standards for the City* shall be design and review guidelines adopted by the Historic and Architectural Review Commission to ensure that new construction, reconstruction, alterations and demolition of existing improvements within the City will be compatible with, preserve and enhance the historic character, fabric and resources of the City.

*Developed land* means premises on which development has taken place or is authorized under a permit currently in force.

*Development* means any man-made change to improved or unimproved real estate, including but not limited to construction, demolition, renovation, rehabilitation, mining, dredging, filling, grading, paving, excavation or drilling operations.

*Dormitory* means a multiple unit dwelling which does not contain complete cooking and toilet facilities with each unit.

*Drainway* means a natural or artificial land surface depression with or without perceptively defined beds and banks to which surface runoff gravitates and collectively forms a flow of water continuously or intermittently in a definite direction.

*Dwelling* means a detached building designed for or occupied by one (1) or more families.

*Dwelling, multifamily* means a dwelling containing three (3) or more dwelling units.

*Dwelling unit* means a building or portion of a building intended as living quarters for a single family, having a single set of kitchen facilities (a stove plus either or both a refrigerator and sink) not shared with any other unit; or quarters for up to six (6) persons in a lodging house, dormitory, congregate dwelling or similar group dwelling.

*Event center*: A multi-purpose venue facility hosting special events such as graduations, weddings, anniversaries, holiday gatherings, trade shows, concert settings, and corporate functions or parties. An event center may have a catering kitchen, indoor and/or outdoor seating and a stage or event area.

*Exterior architectural feature* means the architectural style, design, general arrangement and components of all the outer surfaces of a structure or improvement, including but not limited to the color, texture, materials, type and style of all windows, doors, lights, signs and other fixtures appurtenant to the structure or improvement.
Family means any number of persons, including domestic employees, living and cooking together on the premises as a single dwelling unit but excluding any group of more than three (3) individuals not related by blood or marriage.

FEMA means the Federal Emergency Management Agency.

Fill means a deposit of materials of any kind placed by artificial means.

Fixed Guideway Transportation (FGT) means any transportation system composed of trains or cogways utilizing fixed rails or aerial tramways that are required to be licensed by the Colorado Passenger Tramway Safety Board.

Flood means a rise in stream flow above the normal which results in water flowing or standing beyond the banks of the channel.

Flood fringe means that portion of the floodplain inundated by the 100-year return frequency flood not within the floodway.

Flood Insurance Rate Map (FIRM) means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood insurance study means the official report provided by the Federal Insurance Administration that includes flood profiles, the flood boundary-floodway map and the water surface elevation of the base flood.

Floodplain means the land adjacent to a body of water which has been or may hereafter be covered by floodwater. Flood profile means a graph or longitudinal profile showing the relationship of the water surface elevation of a flood event to location along a stream or river.

Floodproofing means combinations of structural provisions, changes or adjustments to a structure resulting in a structure that is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

Floor area means the area included within the surrounding exterior walls of a building, exclusive of courts.

Floor area, gross, means the sum of the gross horizontal areas of the several floors of a building measured from the exterior face of exterior walls, or from the centerline of a wall separating two (2) buildings, but not including interior parking spaces, loading space for motor vehicles, any space where the floor-to-ceiling height is less than six (6) feet, or any area more than fifty percent (50%) below grade.

Floor area, habitable, means heated areas meeting all health and building code requirements for daily use in living, eating, cooking and sleeping, but excluding garages and basements.

Floor area ratio means the relationship of floor area to total lot area expressed as an arithmetic ratio.

Front building line means the nearest portion of a building to the front lot line of a lot, including porches, balconies, decks more than thirty (30) inches above grade, eaves and signs, except such signs as are permitted to extend beyond the building line, and ex-
cept unoccupied architectural projections of such a building where specifically authorized in this Chapter.

*Garage, private* means a building designed and used for the housing of not more than three (3) motor propelled vehicles.

*Garage, public* means a garage other than a private or storage garage, where motor vehicles are housed, equipped for operation, repaired or kept for remuneration, hire or sale.

*Grade (adjacent ground elevation)* means the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line or, when the property line is more than five (5) feet from the building, between the building and a line five (5) feet from the building.

*Guest house* means an accessory structure on the same lot as a single-family dwelling containing a single dwelling unit for occasional occupancy by guests of the residents of the principal dwelling.

*Guest unit* means a room or suite of rooms without cooking facilities, suitable for separate occupancy in a motel, hotel, lodging house or similar establishment. If containing a stove plus either or both a kitchen sink and a refrigerator, it shall be considered as a dwelling unit.

*Habitable space* means a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas are not considered habitable space.

*Hawking* means the act of soliciting customers or distributing or displaying literature, coupons, signs, posters, tokens or coins or using a loudspeaker or voice amplification device or music for the primary purpose of soliciting or attracting customers to a business. Disseminating information which is not primarily for the purpose of proposing a commercial transaction is not considered hawking. Waving at customers shall not be considered hawking.

*Hawking zone* means that area around the primary entry of a casino or other business limited to the width of the primary entry, or a width of five (5) feet, whichever is greater, and extending no more than three (3) feet into the established sidewalk right-of-way. In the event the primary entry is recessed from the face of the exterior wall of the casino or other business, the five-foot hawking zone width shall be established from the points of the intersection of the face of the exterior wall and the walls of the recessed portion of the primary entry.

*Height. See Building height.*

*Historic resources* mean resources which have officially been included in the National Register of Historic Places designated by statute or included in an established list of places compiled by the State Historic Society.

*Hotels and motels* mean any building or portion thereof, containing six (6) or more guestrooms used, designed to be used, let or hired out for occupancy by persons on more or less a temporary basis.

*Impervious surface area. The area of the lot covered by the following shall be included in impervious surface in all districts:*

- a. The principal building;
- b. All accessory buildings, parking garages, carports and utility sheds;
- c. Porches, stairways and elevated walkways, paved areas or areas otherwise covered with materials impervious to water or with gravel; or
d. Parking areas and driveways regardless of surface materials.

Improvement means any building, structure, place, work of art or other object constituting a physical betterment of real property or any part of such betterment.

Interim use means any use of a property not permitted indefinitely as a use by right, but permitted for a specified period of time by special use permit. In this Chapter, interim uses are outlined in the commercial and industrial zone districts.

Kennel means facilities for the harboring and/or care of more than three (3) dogs three (3) months old or older, whether commercially operated or not.

Landscaping means the preservation of the existing trees, shrubs, grass and decorative materials on a lot, tract or parcel of land or the rearrangement thereof or the modification thereof by planting or installing more or different trees, shrubs, grass or decorative materials.

Light manufacturing means mechanical or chemical transformation of materials or components into new products, including fabrication, processing, assembly, finishing or packaging, provided that materials transformed do not weigh more than one hundred (100) tons/year (including division).

Lot means a continuous parcel of land undivided in its ownership, available to be used, developed or built upon as a unit.

Lot area means the horizontal area of a lot exclusive of any area in a street or recorded way open to public use; however, land within a 100-year floodplain or having slope in excess of thirty percent (30%) or above the elevation serviceable by City water without a subarea pumping and storage system shall be credited at one-tenth ($\frac{1}{10}$) actual area in meeting lot area requirements.

Lot, corner means a lot which occupies the interior angle at the intersection of two (2) streets which make an angle of less than one hundred thirty-five degrees ($135^\circ$) with each other and either or both of said streets provide primary access to the property.

Lot, interior means a lot other than a corner lot, through lot or reverse corner lot.

Lot line, front means the property line dividing a lot from a street. On a corner lot, only the shorter street frontage shall be considered a front lot line.

Lot line, rear means the property line of a lot opposite the front lot line.

Lot line, side means any lot property line other than a front or rear lot line.

Lot, through means a lot, other than a corner lot, having frontage on more than one (1) street.

Lowest floor means the lowest horizontal surface within a structure, including basement.

Major alteration means physical changes to such extent that the cost of those changes exceed one-half ($\frac{1}{2}$) the replacement cost of the area being altered.

Manufactured home means a structure on a permanent chassis, transportable in one (1) or more sections, that, when erected on site, is three hundred twenty (320) or more square feet; that is built and designed to be used as a dwelling when connected to the required utilities; that includes a plumbing, heating, air-conditioning, and electrical systems; and that has a federal certification label or tag permanently affixed to it pursu-
ant to 42 U.S.C. § 5401, et seq., as may be amended from time. "Manufactured home" does not include any self-propelled recreational vehicle.

**Mini-warehouse/storage:** Enclosed warehouse units which are rented or leased to second parties for storage purposes, and which have no outside storage. No residential unit is allowed with this use.

**Municipal parking lot** means government-owned or operated parking lots associated with municipal uses including, but not limited to, such uses as a city hall, post office and county offices.

**Nonconforming building** means any legally existing building which does not conform to the applicable regulations of this Chapter for the zoning district in which such nonconforming building is located, either at the effective date of the ordinance codified herein or as a result of subsequent amendments which may be incorporated into this Chapter.

**Nonconforming lot** means a legally created lot not conforming to current lot areas or width requirements resulting from subsequent adoption or amendment of such requirements.

**Nonconforming use** means any legally existing use, whether within a building or on a tract of land, which does not conform to the use regulations of this Chapter for the zoning district in which such nonconforming use is located either at the effective date of the ordinance codified herein or as a result of subsequent amendments which may be incorporated into this Chapter.

**Nude model studio** means any place where a person, who appears in a state of nudity or displays specified anatomical areas, is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other means. The definition of *nude model studio* does not apply to:

(a) a college, junior college or university supported entirely or partly by taxation; (b) a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or (c) a business located in a structure which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and where, in order to participate in a class, a student must enroll at least three (3) days in advance of class; and where no more than one (1) model is on the premises at any one (1) time.

**Nudity or state of nudity** means:

a. The appearance of the human bare buttoc, anus, male genitals, female genitals or the aureole or nipple of the female breast; or

b. A state of dress which fails to opaquely and fully cover a human buttoc, anus, male or female genitals, pubic region or aureole or nipple of the female breast.

**Obstruction** means any dam, wall, embankment, levee, dike, pile abutment, projection, excavation, channel rectification, bridge conduit, culvert, building, fence, rock, gravel, refuse, fill, structure or matter in a regulatory flood hazard area which may impede, retard or change the direction of water flow, either in itself or by catching or collecting debris carried by such water, or that is placed where the flow of water might carry the same downstream to the damage of life and property elsewhere.

**Official floodplain map** means the map adopted by ordinance of the City as the Official Floodplain Map.
Open space means that portion of the net site not covered by buildings, parking areas, driveways or other impervious surfaces. Open space shall be devoted to the purpose of outdoor living spaces for the residents and may include lawn areas, walkways, sitting areas, courtyards and outdoor recreation facilities and landscaped areas. Recreation buildings, gazebos, private patios or other private open space, tennis courts, swimming pools or other meaningful recreation facilities common to the residents shall be considered as open space.

Ordinary high water line means the highest point subject to inundation annually or more often.

Parcel means a lot or series of contiguous lots held in common ownership under a single conveyance.

Plan means the provisions for development of a planned unit development which may include, and need not be limited to, easements, covenants and restrictions relating to use, location and bulk of buildings and other structures, intensity of use or density of development utilities, private and public streets, ways, roads, pedestrian areas and parking facilities, common open space and other public facilities. Provisions of the plan means the written and graphic materials referred to in this definition.

Planned unit development (PUD) means an area of land, controlled by one (1) or more landowners, to be developed under unified control or unified plan of development for a number of dwelling units, residential, commercial, educational, recreational or industrial uses or any combination of the foregoing, the plan for which may not correspond in lot size, bulk or type of use, density, lot coverage, open space or other restriction to the existing land use regulations.

Planning Director means the person charged with the administration and enforcement of this Chapter, or his or her duly authorized representative. In the absence of a Planning Director, the City Manager, or his or her designee, shall be charged with the administration and enforcement of this Article.

Primary entry means the principal entrance through which most people enter the building (Source: 1991 Uniform Building Code). There shall be only one (1) primary entry per building or casino.

Principal use means the primary purpose or function that a lot serves or is intended to serve.

Property means real property, including improvements thereon.

Public facility means a building or structure owned or leased by a governmental agency and operated by a governmental agency to provide a governmental service to the public.

Public right-of-way means all roads, streets and alleys and all other dedicated rights-of-way, access and utility easements of the City, the State, or any district, utility or railroad.

Public utility facility means a business or service which is engaged in regularly supplying the public with some commodity or service which is of public consequence and need, such as electricity, natural gas, water, sewer, transportation or telephone service.

Rear building line means the outermost portion of a building facing the rear lot line of a lot, including porches, balconies, decks more than thirty (30) inches above grade and signs, except such signs as are permitted to extend beyond the building line, and except the eaves of any building.
Regulatory flood datum means the reference elevation above mean sea level which represents the peak elevation of the 100-year return frequency flood.

Regulatory flood protection elevation means the elevation one (1) foot above the regulatory flood datum.

Residential use secondary to the principal use means the residential use of a dwelling unit as a secondary, as opposed to a principal use, in a nonresidentially zoned district, subject to the special review use regulations as more particularly set forth in this Chapter.

Retaining wall means a wall designed to resist the lateral displacement of soil or other materials.

River bank means the boundary along the bank of a stream or river at the high water mark.

River wall means an erection of stone, brick or other material, raised to some height and intended for the purpose of security or enclosure of any river or stream.

Sexual encounter establishment means a business or commercial establishment, that as one (1) of its primary business purposes, offers, for any form of consideration, a place where two (2) or more persons may congregate, associate or consort for the purpose of specified sexual activities or the exposure of specified anatomical areas or activities when one (1) or more of the persons is in a state of nudity. An adult motel will not be classified as a sexual encounter establishment by virtue of the fact that it offers private rooms for rent.

Sexually oriented business means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, sexual encounter establishment or nude model studio. The definition of sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist or similar person licensed by the State engages in medically approved and recognized sexual therapy.

Short-term rental means a dwelling occupied by a paying guest on a temporary or transient basis, not exceeding thirty (30) days, where kitchen and other food preparation facilities may be provided, and which may or may not be owner occupied. A vacation rental does not include owner-occupied bed-and-breakfast establishments, but does include cabins and similar structures designed and intended to be occupied by the traveling public for less than thirty (30) consecutive days.

Side building line means the outermost portion of a building facing the side lot line of a lot, including porches, balconies, decks more than thirty (30) inches above grade and signs and except the eaves of any building; provided that the outermost portions of a building whose sideline faces a street shall not include unoccupied architectural projections of such a building which do not extend more than four (4) feet from the wall of such building and which provide a minimum clearance of nine (9) feet beneath such projections.

Slope, average means difference in elevation divided by horizontal distance, measured over the less demanding of either the entire parcel or the area proposed to be altered, based on two-foot contour intervals.

Specified anatomical areas includes any of the following:

a. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the aureole; or
b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities includes any of the following:

a. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus or female breast;

b. Sex acts, normal or perverted, actual or simulated, including, but not limited to, intercourse, oral copulation, sodomy, sadomasochism or bestiality;

c. Masturbation, actual or simulated;

d. Human genitals in a state of sexual stimulation, arousal or tumescence;

e. Excretory functions as part of or in connection with any of the activities set forth in Subparagraphs a through d above.

Storage and utility area means that portion of a building designed, used or both, primarily for holding or safekeeping goods or machinery or for the location or installation of mechanical devices to provide, generate or store utility service including heat, water, cooling, electric power, propane gas and natural gas.

Street means any public or private thoroughfare which affords a principal means of access to abutting property and including such terms as public right-of-way, highway, road and avenue.

Structural alteration means any change in the supporting members of a building, such as bearing walls, columns, beams or girders.

Structure means anything constructed or erected, the use of which requires location on or in the ground, including buildings, manufactured homes, billboards, swimming pools or the like, or part thereof.

Underlying zone district means the zoning districts set forth in Articles IV and V of this Chapter which divide the City into zoning districts.

Use means the purpose for which land or premises or a building thereon is designed, arranged or intended, or for which it is or may be occupied or maintained.

Use, accessory means an activity incidental to and located on the same premises as a principal use conducted by the same person or his or her agent. No use other than parking shall be considered accessory unless functionally dependent on and occupying less land area than the principal use to which it is related and occupying less than one-quarter (¼) as much habitable floor area as that principal use.

Use, nonconforming means use of land or a building that does not conform with any use authorized by the use regulations of the district in which it is situated. Nonconforming use also means the use of a structure or premises conflicting with the regulations and requirements of this Chapter.

Yard means an open space other than a court, not in an alley or street, unoccupied and unobstructed from the ground upward except as otherwise provided in this Chapter.

Yard, front means a yard extending the full width of the lot or parcel, the depth of which is measured in the least horizontal distance between the front lot line and the nearest wall of the principal building, such distance referred to as the front yard setback.

Yard, rear means a yard extending the full width of the lot or parcel, the depth of which
is measured in the least horizontal distance between the rear lot line and the nearest wall of the principal building, such distance being referred to as the rear yard setback.

Yard, side means a yard extending from the front yard to the rear yard, the width of which is measured in the least horizontal distance between the side lot line and the nearest wall of the principal building. (Ord. 94-11 §1; Ord. 94-26 §2; Ord. 98-33 §§1, 2; Ord. 99-7 §§1, 2; Ord. 2000-23 §1; Ord. 2002-09 §1; Ord. 2002-42 §1; Ord. 2009-12 §4; Ord. 2009-23 §9; Ord. 2016-14 §1; Ord. 2018-2 §1; Ord. 2018-10 §1; Ord. 2019-21 §1)

Secs. 16-25—16-40. Reserved.

ARTICLE III

Application of Zoning Districts

Sec. 16-41. Establishment of districts.

In order to carry out the purpose and intent of this Chapter, the following zoning districts are hereby created:

(1) HR, Historic Residential District.

(2) RR, Rural Residential District.

(3) ECP, Environmental Character Preservation District.

(4) C/BS, Commercial/Business District.

(5) CG, Core Gaming District.

(6) MG, Millsite Gaming.

(7) TG, Transitional Gaming District.

(8) HD, Hillside Development - Mixed Use District.

(9) LM, Low Intensity - Mixed Use District.

(10) LI, Limited Industrial District.

(11) HARD, History Appreciation Recreation Destination District.

(12) HAP, Historic Appreciation and Preservation District.

(13) PF, Public Facilities District.

(14) GOLD, Gaming Outstanding Lodging and Dining District. (Ord. 94-11 §1; Ord. 2013-14 §1; Ord. 2013-46 §1)

Sec. 16-42. Establishment of overlay districts.

The following overlay districts are applicable to each zoning district. The overlay districts are as follows:

(1) HAO, Historic and Architectural Review Overlay District.

(2) FPO, Floodplain Overlay District.

(3) PUD, Planned Unit Development. (Ord. 94-11 §1)

Sec. 16-43. Relationship to past zoning districts.

This Chapter shall render certain specific zoning districts obsolete. These obsolete zoning districts shall be adjusted to bring the previous terminology into conformance with this Chapter. These adjustments are as follows:

<table>
<thead>
<tr>
<th>Obsolete Districts</th>
<th>New Zoning Districts</th>
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<td>R-2 Residential 2</td>
<td>HR Historic Residential</td>
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<tr>
<td>R-3 Residential 3</td>
<td>No longer applicable</td>
</tr>
<tr>
<td>M Mining</td>
<td>ECP Environmental Character Preservation</td>
</tr>
<tr>
<td>AG Agricultural</td>
<td>No longer applicable</td>
</tr>
<tr>
<td>Industrial Limited</td>
<td>Industrial</td>
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</tbody>
</table>

(Ord. 94-11 §1; Ord. 99-24 §1)
Sec. 16-44. Zoning district regulations.

The individual zoning districts are described below. The elements of each zoning district description are as follows:

(1) District characteristics. Describe the location, natural and built characteristics and attributes which shall be used to determine appropriate zoning district classifications for particular land parcels.
(2) Purpose and objectives. Describe the desired characteristics, functions and attributes of appropriate uses for the zoning district, carrying out the intent of the City's Comprehensive Plan. Appropriate uses shall be located and designed to fulfill the desired purpose and objectives of the zoning district in which they fall.

(3) Use regulations.

   a. Permitted principal uses are uses by right, which are permitted anywhere within the particular zoning district in which they are identified. Permitted principal uses require site development plan approval and building permit approval.

   b. Permitted accessory uses are uses which are customarily incidental to the identified permitted uses and are also permitted, provided that they meet any applicable regulations. Permitted principal uses require site development plan approval and building permit approval.

   c. A certificate of use is required to operate an off-street parking lot in those zoning districts where off-street parking is a permitted use, subject to compliance with Sections 16-262 through 16-264 of this Chapter.

   d. Special review uses are uses which may be allowed in the zoning district indicated subject to any applicable regulations if it can be demonstrated that the location and the site proposed for the use are appropriate, facilitating the use in a manner which supports the purposes of the zoning district and which is compatible with the surrounding area. Additional uses which are not listed, but which are consistent with the purpose and objectives of the zoning district and are similar in character and level of impacts as the identified permitted and special review uses for the zoning district, may also be permitted subject to special review. Special review uses require the issuance of a special review use permit by the Board of Aldermen after public hearings before the Board of Aldermen.

   e. Prohibited uses are uses which are not allowed within the particular zoning district under any circumstances or conditions.

(4) Dimensional regulations are minimum restrictions which apply to the siting and massing of buildings and structures on the lot from which no variance will be permitted, except as provided under Article VI, Division 3, and Section 16-366 of this Chapter.

(5) District development standards are minimum standards that development and uses within the zoning district must meet to obtain site development plan approval. (Ord. 94-11 §1; Ord. 98-33 §3; Ord. 2002-28 §1; Ord. 2009-13 §1)

Sec. 16-45. Regulations in other sections.

(a) All applicable general development standards contained in Articles VII through XIV of this Chapter, including but not limited to parking, signage and landscaping, shall apply to the development of properties in all established zoning districts where applicable. Any overlay districts shall apply to the development of properties in all established zoning districts where applicable.

(b) In case of a conflict in the regulations of different sections of this Chapter, the more restrictive regulation shall apply. For example, where regulations in an overlay district are applicable and are more restrictive than those within the zoning district, the regulations of the overlay district shall apply, except where specifically listed within the final document of an approved planned unit development. (Ord. 94-11 §1, 1994)
Sec. 16-46. Zoning district map.

(a) Incorporation of map.

(1) The location and boundaries of the zoning districts established by this Chapter are shown upon the Zoning District Map of the City which is incorporated into this Chapter. The Zoning District Map, together with all data shown thereon and all amendments thereto, is by reference made part of this Chapter.

(2) The Zoning District Map shall be identified by the signature of the Mayor and attested by the City Clerk and shall bear the seal of the City and the date of adoption.

(3) The Zoning District Map shall be located in the office of the City Clerk and shall be available for inspection at the City Hall.

(b) Zoning district boundaries. Except where otherwise indicated, zoning district boundaries shall follow municipal corporation limits, section lines, lot lines, right-of-way lines or extensions thereof. In property where a zoning district boundary divides a lot or parcel, the location of such boundary, unless indicated by legal description with distance and bearing or other dimensions, shall be determined by the scale of Zoning District Map. Where a zoning district boundary coincides with a right-of-way line and said right-of-way line is abandoned, the zoning district boundary shall then follow the center line of the former right-of-way. Land not part of a public, railroad or utility right-of-way and which is not indicated as being in any zoning district shall be considered to be included in the most restricted adjacent zoning district even when such district is separated from the land in question by a public, railroad or utility right-of-way.

(c) Boundary clarification.

(1) In the event that a zoning district boundary is unclear or is disputed, it shall be the responsibility of the Planning Director to determine the intent and actual location of the zoning district boundary.

(2) Any appeal of the determination of the zoning district boundary made by the Planning Director shall be heard by the Board of Appeals in accordance with the procedures outlined in Section 16-366.

(d) Amendments to map. Changes in the boundaries of any zoning district shall be made only upon amendment to the Zoning Ordinance per Section 16-365 and shall promptly be entered on the Zoning District Map with an entry on the map giving the number of the amending ordinance and the date with the signature of the Mayor, attested by the signature of the City Clerk. (Ord. 94-11 §1, 1994)

Secs. 16-47—16-60. Reserved.

ARTICLE IV
Residential Districts

Division I
Historic Residential (HR)

Sec. 16-61. District characteristics.

The HR zoning district shall replace all existing R-1 zones, as defined in the May 1991 Zoning Ordinance. (Ord. 94-11 §1)

Sec. 16-62. Purpose.

The purpose of the HR zoning district is to promote the continuance of single-family neighborhoods and preserve the historic character and appearance of the existing residences and neighborhoods. (Ord. 94-11 §1)

Sec. 16-63. Objectives.

The objectives of the HR zoning district are to:

(1) Retain the historically residential areas as quiet, clean and safe residential neighborhoods.
(2) Allow for limited home-based businesses, to help provide homeowners with additional economic means for maintaining permanent residency.

(3) Ensure that new development is consistent with the historic appearance and character of the existing residences and neighborhoods. (Ord. 94-11 §1)

Sec. 16-64. Use regulations.

(a) Permitted principal uses.

(1) One (1) single-family dwelling unit.

(2) Neighborhood playground, park or common area.

(b) Permitted accessory uses.

(1) Uses which are customarily incidental to any of the permitted principal uses and are located on the same lot or on an adjacent lot.

(2) Home-based businesses which occupy less than thirty-five percent (35%) of the gross floor area on the lot and which have no exterior indication of nonresidential activity, except for parking or signage as allowed by Articles XI and XIII of this Chapter. The business owner or operator must reside and maintain primary residency within the principal single-family dwelling unit or on the lot.

(3) Parking as specified at Section 16-263 of this Chapter. Notwithstanding anything to the contrary contained in this Chapter, on-site/off-street parking is prohibited within the Historic Residential District unless the parked vehicle is licensed or registered to the owner, tenant or occupant of the principal single-family dwelling unit on the lot that is being used for on-site/off-street parking.

(4) Bed and breakfasts and short-term rentals.

(c) Special review uses.

(1) State-licensed group home for either the developmentally disabled or mentally ill or the aged as these terms are defined by Section 31-23-303, C.R.S., may be permitted if it serves not more than eight (8) developmentally disabled persons or eight (8) mentally ill persons, at least one (1) appropriate staff person resides and maintains primary residency within the group home and the group home is not located within seven hundred fifty (750) feet of another such group home.

(2) Owner-occupied or nonprofit group home for the aged as these terms are defined by Section 31-23-303, C.R.S., may be permitted if it serves no more than eight (8) persons, is not located within seven hundred fifty (750) feet of another such group home and the owner or operator resides and maintains primary residency within the group home.

(3) Utility infrastructure may be permitted if it is needed to serve the area in which it is located, cannot be located in a nonresidential district and is designed so as to be nonobstructive and blend in with the surrounding area.

(4) Home-based businesses which occupy greater than or equal to thirty-five percent (35%) of the gross floor area on the lot and/or have some limited external indication of nonresidential activity may be permitted if the business owner or operator resides and maintains primary residency within the principal single-family dwelling unit on the lot, and there are not any unacceptable adverse impacts on neighboring uses. (Ord. 94-11 §1; Ord. 98-33 §4; Ord. 2009-12 §5; Ord. 2018-10 §2)
Sec. 16-65. Dimensional regulations.

(a) Lot area and width requirements.

(1) Minimum lot area: two thousand four hundred (2,400) square feet.

(2) Minimum lot dimensions:
   a. Sixty (60) feet deep.
   b. Forty (40) feet wide.

(b) Minimum setbacks.

(1) Front yard: twelve (12) feet.

(2) Side yard: seven (7) feet.

(3) Rear yard: seven (7) feet.

(c) Maximum impervious coverage: eighty percent (80%).

(d) Building height: twenty-seven (27) feet.

(Ord. 94-11 §1)

Sec. 16-66. District development standards.

(a) All development shall be serviced by municipal or district water and sanitation systems.

(b) Accessory uses which are customarily incidental to the permitted principal uses shall represent less than thirty-five percent (35%) of the ground floor area on the lot.

(c) Garage doors which face toward a roadway must be set back at least eighteen (18) feet from the roadway.

(d) All residential dwellings, including without limitation manufactured homes, shall meet the following minimum requirements:

(1) The dwelling dimensions shall not be less than twenty-four (24) feet wide nor less than thirty-six (36) feet long;

(2) Installation of the dwelling shall be on a permanent foundation that has been certified by a professional engineer licensed by the State;

(3) The exterior of the dwelling shall be wood, brick, or equivalent siding;

(4) The dwelling's roof must be pitched 8:12 at a minimum;

(5) The dwelling's primary entrance shall be oriented to the lot's front yard so as to face or abut a street; and

(6) The dwelling must meet or exceed, on an equivalent performance engineering basis, the standards established by the International Building Code, International Residential Code, and the Uniform Code for Abatement of Dangerous Buildings as adopted in this Code. In determining the engineering basis, normal engineering calculations for testing following commonly accepted engineering practices, all components and subsystems of a manufactured home must meet or exceed health, safety and functional requirements to the same extent as other single-family dwellings as outlined in the International Residential Code. As an equivalent performance engineering standard for manufactured homes, snow loads shall meet the requirements as outlined in Chapter 3 of the International Residential Code, Section R301.2. (Ord. 94-11 §1; Ord. 2018-2 §2)

Division 2

Rural Residential (RR)

Sec. 16-67. District characteristics.

RR zoning districts are intended for and may be established in those areas on the periphery of the City, which can be served by municipal or district water and sanitation systems. (Ord. 94-11 §1; Ord. 2017-14 §1)
Sec. 16-68. Purpose.

The purpose of RR zoning districts is to allow for low density single-family residences. (Ord. 94-11 §1)

Sec. 16-69. Objectives.

The objectives of the RR zoning district are to:

1. Allow for residential development that may be located away from existing and potential activity centers.

2. Retain the natural beauty of the rural mountain areas and a feeling of openness, by ensuring residences are located, sited and designed to be nonobtrusive and blend in with existing natural features.

3. Ensure public health and safety by requiring development to be serviced by connections to municipal or district water and sanitation systems or by on-site systems that at a minimum have been approved to meet all state health standards and that are inspected on a regular basis. (Ord. 94-11 §1)

Sec. 16-70. Use regulations.

(a) Permitted principal uses.

1. One (1) single-family dwelling unit.

2. Neighborhood playground, park or common area.

(b) Permitted accessory uses.

1. Uses which are customarily incidental to any of the principal uses and are located on the same lot or on an adjacent lot.

2. Home-based businesses which occupy less than thirty-five percent (35%) of the gross floor area on the lot and which have no exterior indication of nonresidential activity, except for parking or signage as allowed by Articles XI and XIII of this Chapter. The business owner or operator must reside and maintain primary residency within the principal single-family dwelling unit or on the lot.

3. One (1) guest house which has a gross floor area that is no greater than eighty-five percent (85%) of the gross floor area of the principal single-family dwelling unit.

4. Parking as specified at Section 16-263 of this Chapter. Notwithstanding anything to the contrary contained in this Chapter, on-site/off-street parking is prohibited within the Rural Residential District unless the parked vehicle is licensed or registered to the owner, tenant or occupant of the principal single-family dwelling unit on the lot that is being used for on-site/off-street parking.


(c) Special review uses.

1. State-licensed group home for either the developmentally disabled or mentally ill or the aged as these terms are defined by Section 31-23-303, C.R.S., may be permitted if it serves not more than eight (8) developmentally disabled persons or eight (8) mentally ill persons, at least one (1) appropriate staff person resides and maintains primary residency within the group home, and the group home is not located within seven hundred fifty (750) feet of another such group home.

2. Owner-occupied or nonprofit group home for the aged as these terms are defined by Section 31-23-303, C.R.S., may be permitted if it serves no more than eight (8) persons, is not located within seven hundred fifty (750) feet of another such group home,
and the owner or operator resides and maintains primary residency within the group home.

(3) Utility infrastructure may be permitted if it is needed to serve the area in which it is located, cannot be located in a nonresidential district, and is designed so as to be nonobtrusive and blend in with the surrounding area. (Ord. 94-11 §1; Ord. 98-33 §5; Ord. 2009-12 §6; Ord. 2018-10 §3)

Sec. 16-71. Dimensional regulations.

(a) Lot area and width requirements.

(1) Minimum lot area: municipal or district water and sanitation system: thirty thousand (30,000) square feet. Independent on-site sanitation system: three (3) acres.

(2) Minimum lot dimensions are:

a. One hundred fifty (150) feet deep.

b. One hundred fifty (150) feet wide.

(b) Minimum setbacks.

(1) Front yard: twenty (20) feet.

(2) Side yard: twenty (20) feet.

(3) Rear yard: twenty (20) feet.

(c) Maximum impervious coverage: forty percent (40%).

(d) Maximum height: twenty-seven (27) feet.

(Ord. 94-11 §1)

Sec. 16-72. District development standards.

(a) Development shall be located, sited and designed to be nonobtrusive and blend in with the existing natural environment and minimize disruption to existing terrain, vegetation, drainage patterns, natural slopes and any distinctive natural features.

(b) Accessory uses which are customarily incidental to the permitted principal uses shall represent less than thirty-five percent (35%) of the ground floor area on the lot.

(c) All residential dwellings, including without limitation manufactured homes, shall meet the minimum requirements set forth in Section 16-66(d) of this Code. (Ord. 94-11 §1; Ord. 2018-2 §2)

Division 3

Environmental Character Preservation (ECP)

Sec. 16-73. District characteristics.

The ECP zoning district shall replace all existing M zones as defined in the May 1991 zoning ordinance. This zoning district shall contain those areas which are considered to be of special significance for their unique natural or cultural importance in defining the character of the City or for the protection of public health and safety. (Ord. 94-11 §1)

Sec. 16-74. Purpose.

The purpose of the ECP zoning district is to preserve environmentally and culturally sensitive areas that are prominent features of the community, and protect public health and safety. (Ord. 94-11 §1)

Sec. 16-75. Objectives.

The objectives of the ECP zoning district are to:

(1) Preserve distinctive natural features including drainage swales, streams, hillsides and mountainsides, ridge lines, rock outcroppings, vistas, natural plant formations, trees and scenic views.
(2) Protect distinctive features of the City's mining heritage, which are a cultural amenity to the community.

(3) Avoid development in areas that may be a threat to public health and safety. (Ord. 94-11 §1, 1994)

Sec. 16-76. Use regulations.

(a) Permitted principal uses.

(1) One (1) single-family dwelling unit.

(2) Common open space areas.

(3) Agriculture, horticulture, silviculture and grazing activities.

(4) Public facilities.

(b) Permitted accessory uses.

(1) Uses which are customarily incidental to any of the principal uses and are located on the same lot or on an adjacent lot.

(2) Home-based businesses which occupy less than thirty-five percent (35%) of the gross floor area on the lot and which have no exterior indication of nonresidential activity, except for parking or signage as allowed by Articles XI and XIII of this Chapter. The business owner or operator must reside and maintain primary residency within the principal single-family dwelling unit or on the lot.

(3) Parking as specified at Section 16-263 of this Chapter.

(4) Bed and breakfasts and short-term rentals.

(c) Special review uses.

(1) State-licensed group home for either the developmentally disabled or mentally ill or the aged as these terms are defined by Section 31-23-303, C.R.S., may be permitted if it serves not more than eight (8) developmentally disabled persons or eight (8) mentally ill persons, at least one (1) appropriate staff person resides and maintains primary residency within the group home, and the group home is not located within seven hundred fifty (750) feet of another such group home.

(2) Owner-occupied or nonprofit group home for the aged as these terms are defined by Section 31-23-303, C.R.S., may be permitted if it serves no more than eight (8) persons, is not located within seven hundred fifty (750) feet of another such group home, and the owner or operator resides and maintains primary residency within the group home.

(3) Mining and mining related uses, including mining heritage uses, such as a mining museum which preserve the community's mining heritage, may be permitted if they are not a threat to public health and safety and do not adversely impact surrounding land uses.

(4) Outdoor recreation uses may be permitted if they are nonobtrusive and blend in with the existing environment, and require a minimum of support structures or facilities, such as cross-country skiing or horseback riding.

(5) Campgrounds, including those providing recreational vehicle hookups. These specific uses shall be required to provide for on-site sanitary facilities, all-weather accessibility and road surfacing, and a caretaker residence. Campgrounds shall also be required to have a source of water contained on-site considered sufficient for fire protection. No campground shall be located within five hundred (500) feet of a preexisting residentially developed property.
(6) Surface transportation-related facilities such as private shuttle stops not located on public rights-of-way and shuttle stations with indoor areas designed for passenger waiting and comfort.

(7) Fixed guideway transportation systems such as trains, cogways and aerial tramways. Fixed guideway transportation systems shall be subject to specific regulations found in Section 16-363(6).

(8) Utility infrastructure may be permitted if it is needed to serve the area in which it is located, cannot be located in a nonresidential district and is so designed so as to be nonobtrusive and blend in with the surrounding area. (Ord. 94-11 §1, 1994; Ord. 2000-23 §§1, 2; Ord. 2009-12 §7; Ord. 2018-10 §4)

Sec. 16-77. Dimensional regulations.

(a) Lot area and width requirements.

(1) Minimum lot area: five (5) acres.

(2) Minimum lot dimensions are:
   a. Two hundred (200) feet deep.
   b. Two hundred (200) feet wide.

(b) Minimum setbacks.

(1) Front yard: twenty-five (25) feet.

(2) Side yard: twenty-five (25) feet.

(3) Rear yard: twenty-five (25) feet.

(c) Maximum impervious coverage: the lesser of fifteen percent (15%) or three thousand (3,000) square feet.

(d) Height: twenty-seven (27) feet. (Ord. 94-11 §1, 1994)

Sec. 16-78. District development standards.

(a) Development shall be located, sited and designed to blend in with the existing natural environment and minimize disruption to existing terrain, vegetation, drainage patterns, natural slopes and any other distinctive natural features.

(b) Accessory uses which are customarily incidental to the permitted principal uses shall represent less than thirty-five percent (35%) of the ground floor area on the lot.

(c) All residential dwellings, including without limitation manufactured homes, shall meet the minimum requirements set forth in Section 16-66(d) of this Code. (Ord. 94-11 §1, 1994; Ord. 2018-2 §2)

Secs. 16-79—16-90. Reserved.

ARTICLE V

Nonresidential Districts

Division 1

Commercial/Business Services (C/BS)

Sec. 16-91. District characteristics.

C/BS zoning districts shall be established in those areas which are highly visible from major roadways and have easy and safe access. (Ord. 94-11 §1, 1994)

Sec. 16-92. Purpose.

The purpose of the C/BS zoning district is to encourage a broad range of commercial services for visitors and residents, which are conveniently accessible by automobile, and which are designed to complement each other in character, scale and proximity. (Ord. 94-11 §1, 1994)
Sec. 16-93. Objectives.

The objectives of the C/BS zoning district are to:

(1) Accommodate retail sales, services and entertainment facilities which are oriented to serving a majority of the needs of residents and visitors and which generate substantial volumes of traffic.

(2) Encourage well planned, attractive clusters or groupings of development that complement existing historic features.

(3) Encourage a mix of complementary commercial uses that share ingress and egress and clustered on-site parking, and that are linked by attractive pedestrian corridors and plazas.

(4) Support existing commercial uses in the City. (Ord. 94-11 §1, 1994; Ord. 2019-21 §2)

Sec. 16-94. Use regulations.

(a) Permitted principal uses. Any of the following uses, provided that the gross floor area of a single building or structure containing the use does not exceed twenty-five thousand (25,000) square feet.

(1) Retail and services.

(2) Automobile service stations.

(3) Lodging accommodations.

(4) Restaurants.

(5) Indoor recreation and amusement.

(6) Bars and lounges.

(7) Offices.

(8) Parks and common areas.

(9) Area-wide transportation facilities.

(10) Parking.

(11) Public facilities.

(12) Event Center (indoor and outdoor).

(13) Mini-Warehousing/Storage (indoor only).

(b) Permitted accessory uses.

(1) Uses which are customarily incidental to any of the permitted principal uses and are located on the same lot.

(2) Parking as specified at Section 16-263 of this Chapter.

(3) Utility infrastructure if it is needed to serve the area in which it is located and is so designed so as to be nonobtrusive and blend in with the surrounding area.

(c) Special review uses.

(1) Any of the permitted principal uses where the gross floor area of a single building containing the use exceeds twenty-five thousand (25,000) square feet may be permitted if the building and accessory facilities are designed to be consistent with the desired character of the area, and do not adversely affect other uses in the area.

(2) Outdoor recreation and amusements may be permitted if they are designed to be consistent with the desired character of the area, do not adversely affect other uses in the area and do not pose a threat to public safety.

(3) Surface transportation related facilities such as private shuttle stops not located on public rights-of-way and shuttle stations with indoor areas designed for passenger waiting and comfort.
(4) Fixed guideway transportation systems such as trains, cogways and aerial tramways. Fixed guideway transportation systems shall be subject to specific regulations found in Section 16-363(g).

(5) Residential use for a caretakers unit that is secondary to the principal use, subject to the criteria contained in Subsection 16-363(h) of this Chapter.

(6) Indoor shooting ranges may be permitted if they are designed to be consistent with the desired character of the area, do not adversely affect other uses in the area and do not pose a threat to public safety.

(7) Campgrounds, including those providing recreational vehicle hookups. These specific uses shall be required to provide for on-site sanitary facilities, all-weather accessibility and road surfacing, and a caretaker residence. Campgrounds shall also be required to have a source of water contained on-site considered sufficient for fire protection. No campground shall be located within five hundred (500) feet of a preexisting residentially developed property. (Ord. 94-11 §1, 1994; Ord. 99-2 §1; Ord. 2000-23 §§4, 5; Ord. 2002-42 §2; Ord. 2019-21 §§ 3, 4)

Sec. 16-95. Dimensional regulations.

(a) Lot area and width requirements.
    (1) Minimum lot area: twenty thousand (20,000) square feet.
    (2) Minimum lot dimension:
        a. One hundred fifty (150) feet deep.
        b. One hundred fifty (150) feet wide.

(b) Minimum setbacks.
    (1) Front yard: ten (10) feet.
    (2) Side yard: ten (10) feet.
    (3) Rear yard: ten (10) feet.
    (4) North Clear Creek: twenty (20) feet from the ordinary high water line of the creek.

(c) Maximum impervious coverage: eighty percent (80%).

(d) Maximum height: twenty-seven (27) feet.
(Ord. 94-11 §1, 1994)

Sec. 16-96. District development standards.

(a) All development shall be designed so that for the given location, egress points, grading and other elements of the development satisfy the requirements set forth below to the greatest extent practicable:
    (1) Reduce the number of access points onto an arterial or collector street;
    (2) Minimize adverse impacts on any existing or planned residential uses;
    (3) Improve pedestrian or vehicle safety within the site and egressing from it; and
    (4) Reduce the visual intrusion of parking areas, screened storage areas and similar accessory areas and structures.

(b) All development including buildings, walls and fences shall be so sited to:
    (1) Complement existing development in scale and location;
    (2) Provide an adequate system of sidewalks or an off-road system of pedestrian and bicycle trails of greater than four (4) feet in width; and
(3) Create pocket parks or green spaces that are accessible to the public and at a minimum provide seating and landscaping. (Ord. 94-11 §1, 1994)

Division 2

Gaming and Entertainment: Gaming Outstanding Lodging and Dining District (GOLD), Core Gaming (CG), Millsite Gaming (MG), and Transitional Gaming (TG)*

Sec. 16-97. Gaming Outstanding Lodging and Dining District (GOLD).

(a) Characteristics. Gaming Outstanding Lodging and Dining District (GOLD). Gaming and entertainment shall be located only in that area defined by Amendment 4 to the Constitution of the State of Colorado, which was adopted in November of 1990. The GOLD zoning district is the area of the City, which is comprised of areas that were previously zoned as CG, MG, and TG following the adoption of Amendment 4 to the Constitution of the State of Colorado, which has now developed into the core of the gaming and entertainment area of the City. The core of the gaming and entertainment area of the City has the characteristics of the other three (3) gaming districts, but also recognizes the viability of the gaming, lodging and dining components located in what has evolved to be the City’s core gaming area.

(b) Purpose. The purpose for the GOLD zoning district is to recognize and encourage the sustained economic viability of the community by allowing gaming and entertainment and encouraging a complementary mix of restaurant and lodging accommodations in a manner which recognizes the continuing viability of the City as a destination resort community.

(c) Objectives. The objectives of the GOLD zoning district are to:

(1) Allow gaming and entertainment as the stimulus for the continued revitalization and sustained economic viability of the community.

(2) Encourage a safe pedestrian-oriented environment with transportation features that minimize vehicular traffic and visual impact on the historical character of the City.

(3) Minimize noise and traffic impacts of gaming and related activities on residential neighborhoods.

(d) Use regulations.

(1) Permitted principal uses.

a. Gaming and entertainment, including casinos established pursuant to State statute, provided that casino activities may
not represent more than thirty-five percent (35%) of the gross floor area of the building or structure in which they are contained.

b. Retail and services.

c. Lodging accommodations.

d. Restaurants.

e. Bars and lounges.

f. Indoor recreation and amusement.

g. Parking.

(2) Permitted accessory uses. Uses which are customarily incidental to any of the permitted principal uses and are located on the same lot. Utility infrastructure if it is needed to serve the area in which it is located and is so designed so as to be nonobtrusive and blend in with the surrounding area.

(3) Special review uses.

a. Special community events such as fairs and carnivals may be permitted if they are generally supported by the community as a whole and do not to exceed two (2) weeks in duration.

b. Outdoor sales and services may be permitted if they are within the permitted minimum setbacks.

c. Surface transportation-related facilities such as private shuttle stops not located on public rights-of-way and shuttle stations with indoor areas designed for passenger waiting and comfort.

d. Fixed guideway transportation systems such as trains, cogways and aerial tramways. Fixed guideway transportation systems shall be subject to specific regulations found in Section 16-363(g).

e. Temporary promotional uses. Temporary tents, air structures, trailers, recreation/commercial vehicles, carts, wagons and booths that are used solely to promote the initial grand opening of a casino within the GOLD district may be allowed when they meet the following criteria:

1. They provide a positive impact in the gaming and entertainment district, as determined by the public hearing, which includes, but is not limited to, aesthetics, site design, architectural compatibility and impacts on traffic.

2. They are located entirely on private property.

3. There is access to the promotional use from a public right-of-way.

4. All required setbacks for the district in which the promotional use is located will be satisfied.

5. There is parking onsite for the promotional use in amount equal to one (1) space for every fifty (50) feet of a promotional use.

6. The duration of the promotional use is ninety (90) days, which may be extended for an additional thirty (30) days, or when the permitted principal use that is being promoted is opened, whichever occurs first.

7. In addition to the requirements contained in Section 16-363 of the Code, the application for a special use permit shall include an authorization letter from the legal property owner giving the applicant permission to ap-
ply for the special use permit and to use the property for the duration of the special use permit.

Notwithstanding anything contained in Section 16-163 of this Code, a special use permit for a promotional use may be issued by the Planning Director without a public hearing before the Board of Aldermen.

(e) Dimensional regulations.

(1) Lot area and width requirements.
   a. Minimum lot area: four thousand (4,000) square feet.
   b. Minimum lot dimensions: one hundred (100) feet deep; forty (40) feet wide.

(2) Minimum setbacks.
   a. Front yard: ten (10) feet.
   b. Side yard: zero (0) feet.
   c. Rear yard: zero (0) feet.

(3) Maximum impervious coverage: one hundred percent (100%).

(4) Maximum height: thirty (30) feet.

(f) Development standards.

(1) All development shall be designed so that for the given location, egress points, grading and other elements of the development satisfy the requirements set forth below to the greatest extent practicable:
   a. Reduce disruption to the existing terrain, vegetation or other natural site features;
   b. Improve pedestrian or vehicle safety within the site and egressing from it; and
   c. Reduce the visual intrusion of parking areas, screened storage areas and similar accessory areas and structures.

(2) All development including buildings, walls and fences shall be so sited to:
   a. Complement existing development in scale and location;
   b. Provide an adequate system of sidewalk or an off-road system of pedestrian and bicycle trails of greater than four (4) feet in width;
   c. Create pocket parks or green spaces that are accessible to the public and at a minimum provide seating and landscaping; and
   d. Follow the existing terrain and avoid trees, rock outcroppings and natural drainage patterns. (Ord. 2013-46 §2)

Subdivision I

Core Gaming (CG), Millsite Gaming (MG), and Transitional Gaming (TG)

Sec. 16-98. District characteristics.

The remainder of the gaming and entertainment area has been divided into three (3) distinct zoning districts, in order to recognize the unique characteristics of each of the areas comprising the districts. The remaining three (3) zoning districts for gaming and entertainment are identified as:

(1) Core Gaming (CG). The CG zoning district may be generally established in the historic commercial core of the City. Historical development was characterized by two- to three-story, flat-faced, flat-roofed commercial structures that were located close together with narrow setbacks from public rights-of-way. They were typically rock, brick and wooden structures with parapet walls serving as storefronts.
(2) Millsite Gaming (MG). The MG zoning district may be generally established in the area located along Highway 119 and adjacent to North Clear Creek. This area was historically composed of millsites and mill buildings which were prominent features in the City’s early history when it was a prosperous mining town. The area between buildings was more spacious than in the core commercial area, as were the setbacks from the right-of-way. Orientation of these buildings had been primarily towards both Clear Creek and public roadways.

(3) Transitional Gaming (TG). The TG zoning district shall be established in those other areas in which gaming is legal, as allowed by constitutional amendment and which were in the City’s early mining history comprised mainly of residential structures. (Ord. 2013-46 §2)

Sec. 16-99. Purpose.

The common purpose for the remaining three (3) gaming and entertainment zoning districts is to encourage the sustained economic viability of the community by allowing gaming and entertainment and encouraging a complementary mix of retail, services, restaurants and lodging accommodations in a manner which preserves and enhances the historical buildings, structures and features of these areas and the prominence of mining in the City’s early history. (Ord. 2013-46 §2)

Sec. 16-100. Objectives.

The objectives of the remaining three (3) gaming and entertainment zoning districts are to:

(1) Allow gaming and entertainment as the stimulus for the continued revitalization and sustained economic viability of the community.

(2) Restore and preserve existing historical commercial style, mill style and residential style buildings and structures and allow for the development of complementary new buildings and structures of consistent architecture and character.

(3) Encourage a safe pedestrian-oriented environment with transportation features that minimize vehicular traffic and visual impact on the historical character of the area.

(4) Minimize noise and traffic impacts of gaming and related activities on residential neighborhoods. (Ord. 2013-46 §2)

Sec. 16-101. Use regulations.

(a) Permitted principal uses.

(1) Gaming and entertainment, including casinos established pursuant to State statute, provided that casino activities may not represent more than thirty-five percent (35%) of the gross floor area of the building or structure in which they are contained.

(2) Retail and services.

(3) Lodging accommodations.

(4) Restaurants.

(5) Bars and lounges.

(6) Indoor recreation and amusement.

(7) Offices.

(8) Parking.

(b) Permitted accessory uses. Uses which are customarily incidental to any of the permitted principal uses and are located on the same lot. Utility infrastructure if it is needed to serve the area in which it is located and is so designed so as to be nonobtrusive and blend in with the surrounding area.
(c) Special review uses.

(1) Special community events such as fairs and carnivals may be permitted if they are generally supported by the community as a whole and do not exceed two (2) weeks in duration.

(2) Outdoor sales and services may be permitted if they are within the permitted minimum setbacks.

(3) Surface transportation-related facilities such as private shuttle stops not located on public rights-of-way and shuttle stations with indoor areas designed for passenger waiting and comfort.

(4) Fixed guideway transportation systems such as trains, cogways and aerial tramways. Fixed guideway transportation systems shall be subject to specific regulations found in Section 16-363(g).

(5) Temporary promotional uses. Temporary tents, air structures, trailers, recreation/commercial vehicles, carts, wagons and booths that are used solely to promote the initial grand opening of a casino within the gaming and entertainment district may be allowed when they meet the following criteria:

   a. They provide a positive impact in the gaming and entertainment district, as determined by the public hearing, which includes, but is not limited to, aesthetics, site design, architectural compatibility and impacts on traffic.

   b. They are located entirely on private property.

   c. There is access to the promotional use from a public right-of-way.

   d. All required setbacks for the district in which the promotional use is located will be satisfied.

   e. There is parking onsite for the promotional use in amount equal to one (1) space for every fifty (50) feet of a promotional use.

   f. The duration of the promotional use is ninety (90) days, which may be extended for an additional thirty (30) days, or when the permitted principal use that is being promoted is opened, whichever occurs first.

   g. In addition to the requirements contained in Section 16-363 of the Code, the application for a special use permit shall include an authorization letter from the legal property owner giving the applicant permission to apply for the special use permit and to use the property for the duration of the special use permit.

Notwithstanding anything contained in Section 16-163 of this Code, a special use permit for a promotional use may be issued by the Planning Director without a public hearing before the Board of Aldermen. (Ord. 2013-46 §2)

Sec. 16-102. Dimensional regulations.

(a) Lot area and width requirements.

(1) Minimum lot area:

   a. CG: two thousand (2,000) square feet.

   b. MG: four thousand (4,000) square feet.

   c. TG: four thousand (4,000) square feet.
(2) Minimum lot dimensions:
   a. CG: one hundred (100) feet deep; forty (40) feet wide.
   b. MG: one hundred (100) feet deep; forty (40) feet wide.
   c. TG: fifty (50) feet deep; forty (40) feet wide.

(b) Minimum setbacks.
   (1) Front yard.
      a. CG: ten (10) feet.
      b. MG: ten (10) feet.
      c. TG: ten (10) feet.
   (2) Side yard.
      a. CG: zero (0) feet.
      b. MG: fifteen (15) feet.
      c. TG: three (3) feet.
   (3) Rear yard.
      a. CG: zero (0) feet.
      b. MG: ten (10) feet.
      c. TG: ten (10) feet.
   (4) Twenty (20) feet from the ordinary high water line of North Clear Creek.

(c) Maximum impervious coverage.
   (1) CG: one hundred percent (100%).
   (2) MG: ninety percent (90%).
   (3) TG: eighty percent (80%).

(d) Maximum height.
   (1) CG: thirty (30) feet.
   (2) MG: forty (40) feet.
   (3) TG: thirty (30) feet. (Ord. 2013-46 §2)

Sec. 16-102.5. District development standards.

(a) All development shall be designed so that for the given location, egress points, grading and other elements of the development satisfy the requirements set forth below to the greatest extent practicable:
   (1) Reduce disruption to the existing terrain, vegetation or other natural site features;
   (2) Minimize adverse impacts on any existing or planned residential uses;
   (3) Improve pedestrian or vehicle safety within the site and egressing from it; and
   (4) Reduce the visual intrusion of parking areas, screened storage areas and similar accessory areas and structures.

(b) All development including buildings, walls and fences shall be so sited to:
   (1) Complement existing development in scale and location;
   (2) Provide an adequate system of sidewalk or an off-road system of pedestrian and bicycle trails of greater than four (4) feet in width;
   (3) Create pocket parks or green spaces that are accessible to the public and at a minimum provide seating and landscaping; and
Follow the existing terrain and avoid trees, rock outcroppings and natural drainage patterns. (Ord. 2013-46 §2)

Division 3
Hillside Development - Mixed Use (HD)

Sec. 16-103. District characteristics.

HD zoning districts are intended for and may be established in those moderately to steeply sloped hillside areas that are contiguous to an existing gaming and entertainment zoning district. (Ord. 94-11 §1, 1994)

Sec. 16-104. Purpose.

The purpose of the HD zoning district is to allow uses which are supportive of and related to the gaming and entertainment zoning districts, while providing a transition to less intensively developed districts as well as to accommodate uses which can rely on roads and facilities which primarily provide access to the gaming and entertainment district. (Ord. 94-11 §1, 1994)

Sec. 16-105. Objectives.

The objectives of the HD zoning district are to:

(1) Encourage the continued development of the gaming and entertainment zoning districts by providing appropriate locations for moderate density residential uses and accommodations and related services oriented to serving the tourist and short term visitor, including inns, hotels, lodges, tourist homes and bed and breakfast establishments, along with restaurants and services to support these guests, residents and employees.

(2) Accommodate an intermixture of complementary compatible uses located on the same property.

(3) Develop a mix of uses that encourages pedestrian movement between a variety of places and the gaming and entertainment zoning districts, particularly as circulation requirements in these areas may be difficult to accommodate by automobile. (Ord. 94-11 §1, 1994)

Sec. 16-106. Use regulations.

(a) Permitted principal uses. The following principal uses are permitted as a right, except special review is required if the floor area associated with any one principal permitted use will be greater than sixty-five percent (65%) of the gross floor area on the lot.

(1) Residences of all types not exceeding thirty (30) units per acre.

(2) Lodging accommodations.

(3) Retail and services.

(4) Restaurants.

(5) Bars and lounges.

(6) Recreation and amusement.

(7) Offices.

(8) Meeting halls.

(9) Neighborhood parks and common areas.

(10) Public facilities.

(b) Permitted accessory uses.

(1) Uses which are customarily incidental to any of the permitted principal uses and are located on the same lot.

(2) Parking as specified at Section 16-263 of this Chapter.
(3) Utility infrastructure if it is needed to serve the area in which it is located and is so designed so as to be nonobtrusive and blend in with the surrounding area.

(c) Special review uses.

(1) Any of the above permitted uses greater than sixty-five percent (65%) of the gross floor area on the lot is associated with that use, may be permitted if a range of different uses are shown to exist in immediate proximity to the proposed use, and the uses are designed to be consistent with the desired character of the area and do not adversely affect other users in the area, and such uses are accessible from the proposed use by sidewalks of at least four (4) feet in width.

(2) Surface transportation-related facilities such as private shuttle stops not located on public rights-of-way and shuttle stations with indoor areas designed for passenger waiting and comfort.
Sec. 16-107. Dimensional regulations.

(a) Lot area and width requirements.

(1) Minimum lot area: twenty thousand (20,000) square feet.

(2) Minimum lot dimensions:
   a. Fifty (50) feet wide.
   b. Seventy-five (75) feet deep.

(b) Setbacks.

(1) Front yard: ten (10) feet.

(2) Side yard: ten (10) feet.

(3) Rear yard: twenty (20) feet.

(c) Maximum impervious coverage: sixty percent (60%).

(d) Maximum height: twenty-seven (27) feet.

(Ord. 94-11 §1, 1994)

Sec. 16-108. District development standards.

(a) All development shall be designed so that for the given location, egress points, grading and other elements of the development satisfy the requirements set forth below to the greatest extent practicable:

(1) Reduce disruption to the existing terrain, vegetation or other natural site features;

(2) Minimize adverse impacts on any existing or planned residential uses;

(3) Improve pedestrian or vehicle safety within the site and egressing from it; and

(4) Reduce the visual intrusion of parking areas, screened storage areas and similar accessory areas and structures.

(b) All development including buildings, walls and fences shall be so sited to:

(1) Complement existing development in scale and location;

(2) Provide an adequate system of sidewalk or an off-road system of pedestrian and bicycle trails of greater than four (4) feet in width;

(3) Create pocket parks or green spaces that are accessible to the public and at a minimum provide seating and landscaping; and

(4) Follow the existing terrain and avoid trees, rock outcroppings and natural drainage patterns. (Ord. 94-11 §1, 1994)

Division 4
Low Intensity - Mixed Use (LM)

Sec. 16-109. District characteristics.

LM zoning districts are intended for and may be established in those areas which are relatively flat or moderately sloped, and are accessible by arterial or collector streets. (Ord. 94-11 §1, 1994)

Sec. 16-110. Purpose.

The purpose of the LM zoning district is to allow for various scales of development in areas where a mix of residential, commercial and/or institutional uses may be appropriate, providing needed services and amenities for both residents and visitors and encouraging the development of uses requiring large tracts of relatively flat land and adequate transportation access to
locate in these areas. (Ord. 94-11 §1, 1994)

Sec. 16-111. Objectives.

The objectives of the LM zoning district are to:

(1) Encourage clustered housing with a variety of housing types.

(2) Accommodate and promote the development of uses which serve Gilpin County residents, and help to diversify the area’s economic base and expand employment opportunities.

(3) Encourage large scale developments, such as a school, hospital or convention center to locate in areas with suitable topography.

(4) Allow for the development of architectural and building styles which, while they should be sensitive to the naturally scenic, mountain environment in which they are built, need not reflect the historic character of development called for in zoning districts which are in visual proximity of the historic core areas. (Ord. 94-11 §1, 1994)

Sec. 16-112. Use regulations.

(a) Permitted principal uses. Any of the following uses, provided that the gross floor area of a single building or structure containing the use does not exceed thirty thousand (30,000) square feet.

(1) Single and multifamily dwelling units, with a maximum density of twenty (20) units per acre.

(2) Large scale, area-wide uses which may include a school, church, hospital, convention center or recreation facility.

(3) Trade services.

(4) Utility infrastructure and offices.

(5) Offices.

(6) Retail and services.

(7) Lodging accommodations.

(8) Neighborhood and community parks.

(9) Outdoor recreational facilities.

(10) Indoor recreation and amusement.

(11) Area-wide transportation and parking facilities.

(12) Restaurants.

(13) Repair and equipment shops.

(14) Automobile service stations and dealerships.

(b) Permitted accessory uses.

(1) Uses which are customarily incidental to any of the principal uses and are located on the same lot.

(2) Parking as specified at Section 16-263 of this Chapter.

(c) Special review uses.

(1) Any of the permitted principal uses where the gross floor area of a single building containing the use exceeds thirty thousand (30,000) square feet, may be permitted if the building and accessory facilities are designed to be consistent with the desired character of the area, and do not adversely affect other uses in the area.
Zoning — Nonresidential Districts

(2) Surface transportation-related facilities such as private shuttle stops not located on public rights-of-way and shuttle stations with indoor areas designed for passenger waiting and comfort.

(3) Fixed guideway transportation systems such as trains, cogways and aerial tramways. Fixed guideway transportation systems shall be subject to specific regulations found in Section 16-363(6). (Ord. 94-11 §1, 1994)

Sec. 16-113. Dimensional regulations.

(a) Lot area and width requirements.

(1) Minimum lot area: twenty thousand (20,000) square feet.

(2) Minimum lot dimensions:
   a. One hundred fifty (150) feet deep.
   b. One hundred fifty (150) feet wide.

(b) Minimum setbacks.

(1) Front yard: twenty-five (25) feet.

(2) Side yard: fifteen (15) feet.

(3) Rear yard: fifteen (15) feet.

(c) Maximum impervious coverage: forty percent (40%).

(d) Maximum height: thirty-five (35) feet. (Ord. 94-11 §1, 1994)

Sec. 16-114. District development standards.

(a) All development shall be designed so that for the given location, egress points, grading and other elements of the development satisfy the requirements set forth below to the greatest extent practicable:

1. Reduce disruption to the existing terrain, vegetation or other natural site features;

2. Decrease the amount of development on slopes of greater than eight percent (8%);

3. Minimize adverse impacts on any existing or planned residential uses;

4. Improve pedestrian or vehicle safety within the site and egressing from it;

5. Reduce the visual intrusion of parking areas, screened storage areas and similar accessory areas and structures;

6. Reduce the volume of cut and fill; grades created by new cuts or fills shall not exceed 3.5:1; and

7. Reduce the number of removed trees measuring four (4) inches in diameter and taller than five (5) feet above ground level.

(b) All development including buildings, walls and fences shall be so sited to:

1. Complement existing development in scale and location; and

2. Follow the existing terrain and avoid trees, rock outcroppings and natural drainage patterns. (Ord. 94-11 §1, 1994)

Division 5
Limited Industrial (LI)

Sec. 16-115. District characteristics.

LI zoning districts may be established in those areas that are appropriate for industrial locations, having access to major streets and a low likelihood of conflict with other uses, as well as a low potential for adverse impacts on the overall visual image of key areas, including entry ways into the community. (Ord. 94-11 §1, 1994)
Sec. 16-116. Purpose.

The purpose of the LI zoning district is to accommodate a range of industrial activities that are of limited intensity, such as research and development institutions, warehousing and wholesaling and small-scale production, fabrication, assembly or processing activities, to help provide a diversified employment base for the community. (Ord. 94-11 §1, 1994)

Sec. 16-117. Objectives.

The objectives of the LI zoning district are to allow for light industrial uses that may serve and provide jobs for the City and the surrounding area, in a manner which minimizes adverse impacts on adjacent uses and the community. (Ord. 94-11 §1, 1994)

Sec. 16-118. Use regulations.

(a) Permitted principal uses. Any of the following uses, provided that outside storage and activity areas, other than employee and visitor parking or loading areas, do not exceed fifteen percent (15%) of the lot area:

(1) Repair and trade services.

(2) Warehouse and wholesale activities, excluding explosives or any materials that are classified as toxic or hazardous under state and federal law.

(3) Utility infrastructure and offices.

(4) Research and development facilities.

(5) Commercial laundries and dry cleaning.

(6) Printing or publishing facilities.

(7) Vocational training center, school.

(8) Production, fabrication or assembly activities.

(9) Retail sales of products produced by the primary light industrial use.

(10) Sexually oriented business subject to Subsection (e) below.

(11) A pawn shop, if it is not established, operated or maintained within one thousand (1,000) feet of any gaming and entertainment zoning district.

(b) Permitted accessory uses.

(1) Uses which are customarily incidental to any of the principal uses and are located on the same lot subject to the restrictions on outside activities cited above for the permitted principal uses.

(2) Parking as specified at Section 16-263 of this Chapter.

(c) Special review uses.

(1) Any of the permitted uses requiring an outside storage or activity area that is equal to or greater than fifteen percent (15%) of the lot area may be permitted if such outside uses will not have an adverse impact on existing uses in the area, including but not limited to safety, noise, odor, light or visual impacts.

(2) A storage or warehouse facility for materials or equipment such as explosives or any materials that are classified as toxic or hazardous under state and federal law may be permitted if such a use demonstrates continuing compliance with state and federal requirements and will not have an adverse impact on existing uses in the area, including but not limited to safety, noise, odor, light or visual impacts.
(3) A pawn shop, may be permitted if it is not established, operated or maintained within one thousand (1,000) feet of any gaming and entertainment zoning district.

(d) Prohibited uses. Reserved.

(e) Specific regulations for sexually oriented businesses.

(1) Sexually oriented businesses shall be located a minimum of one thousand five hundred (1,500) feet from any:

a. Area zoned for residential use;

b. Single-family, two-family or multi-family dwelling;

c. Church, public park or library;

d. State-licensed day-care facility (child or adult);

e. School or educational facility, serving persons age eighteen (18) or younger; or any other sexually oriented business.

Distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior wall of each business. Distance between any sexually oriented business and any church, school, public park, dwelling unit (single or multiple) or residential district shall be measured in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where the sexually oriented business is conducted to the nearest property line of the premises of a church, school or dwelling unit (single or multiple) or the nearest boundary of an affected public park or residential district.

(2) Sexually explicit advertisements or other promotional displays for sexually oriented businesses that are harmful to minors shall not be visible to minors from pedestrian ways, walkways or other public areas.

(3) Sexually oriented businesses are not permitted as an industrial use in a PUD Planned Unit Development District.

(4) Sexually oriented businesses and pawnshops are not permitted in any zone district other than the LI Limited Industrial District. (Ord. 94-11 §1, 1994)

Sec. 16-119. Dimensional regulations.

(a) Lot area and width requirements.

(1) Minimum lot area: four thousand (4,000) square feet.

(2) Minimum lot dimensions:

   a. One hundred (100) feet deep.

   b. Forty (40) feet wide.

(b) Minimum setbacks.

(1) Front yard: twenty-five (25) feet.

(2) Side yard: ten (10) feet.

(3) Rear yard: twenty (20) feet.

(4) Forty (40) feet from the normal high water line of North Clear Creek.

(c) Maximum impervious coverage: ninety percent (90%).

(d) Maximum height: thirty-five (35) feet. (Ord. 94-11 §1, 1994)
Sec. 16-120. District development standards.

All development shall be designed so that for the given location, egress points, grading and other elements of the development satisfy the requirements set forth below to the greatest extent practicable:

1. Reduce disruption to the existing terrain, vegetation or other natural site features;
2. Minimize adverse impacts on residential uses in the area;
3. Improve vehicle safety within the site and egressing from it;
4. Reduce the visual intrusion of parking areas, screened storage areas and similar accessory areas and structures; and
5. Reduce the number of removed trees measuring four (4) inches in diameter and taller than five (5) feet above ground level.

(Ord. 94-11 §1, 1994)

Division 6
History Appreciation Recreation Destination District (HARD)

Sec. 16-121. Purpose and objectives.

(a) Purpose. The purpose of the HARD zoning district is to accommodate and allow for areas owned by, dedicated to, purchased, or acquired by the City, or dedicated to a public use, which allows for the City to provide recreation, both passive and active, and destination activities for the residents and visitors of the City. In addition, the purpose of the HARD zoning district is to accommodate and allow for areas intentionally left free from development, for the preservation of wildlife corridors/habitats, scenic viewsheds, cultural and historical areas, landmarks, and natural resources, including forest lands, range lands, agricultural lands, and lakes, reservoirs, and water storage facilities allowing for passive and active recreation.

(b) Objectives. The objectives of the HARD zoning district are to allow for such uses that are dedicated to serving the public, and to minimize the adverse impacts and adjacent uses and the community. Within the commercial land use areas of the district, the close proximity of buildings to each other and their close proximity to the street will create a personal commercial experience. In addition, the objectives of the HARD zoning district are to allow for such uses that are dedicated to serving the public and may include passive recreational activities, as well as active recreational activities such as mountain biking, hiking, and water sports associated with lakes, reservoirs, and water storage facilities.

(Ord. 2013-14 §2; Ord. 2019-21 § 5)

Sec. 16-122. Use regulations.

(a) Permitted principal uses.

1. Public office buildings;
2. Public parking lots;
3. Nature center/picnic area/trailhead;
4. Trails (hard or soft surface);
5. Water storage facilities, including reservoirs allowing for passive and active recreation; and
6. Public pedestrian malls, including retail facilities on said malls, regardless of whether such facilities are publicly owned so long as they are dedicated to a public use.
7. Marijuana establishments, retail, medical or dual.
(b) Permitted accessory uses. Uses which are customarily incidental to any of the principal uses and are located on the same lot.

(c) Dimensional regulations.

(1) Minimum lot area: none.

(2) Minimum lot dimensions:
   a. Fifty (50) feet deep.
   b. Twenty (20) feet wide.

(3) Minimum setbacks.
   a. Front yard: zero (0) feet.
   b. Side yard: zero (0) feet.
   c. Rear yard: zero (0) feet.

(4) Maximum height: thirty-five (35) feet.

Sec. 16-123. Purpose and objectives.

(a) The purpose of the HAP zoning district is to accommodate and allow for areas owned by, dedicated to, purchased, or acquired by the City, or dedicated to a public use, which contain buildings and/or uses which contain historic structures and/or uses or which otherwise preserve the identity and culture of the City.

(b) Objectives. The objectives of the HAP zoning district are to allow for such uses that are dedicated to serving the public, to further the preservation and restoration of all components of the City, and to minimize the adverse impacts and adjacent uses and the community.

Sec. 16-124. Use regulations.

(a) Permitted principal uses.

(1) Public office buildings;

(2) Public parking lots; and

(3) Other public facilities or facilities dedicated to a public use.

(b) Permitted accessory uses. Uses which are customarily incidental to any of the principal uses and are located on the same lot.

(c) Dimensional regulations.

(1) Minimum lot area: none.

(2) Minimum lot dimensions: none.

(3) Minimum setbacks: none

(4) Maximum height: thirty-five (35) feet.

Division 8
Public Facilities District (PF)

Sec. 16-125. Purpose and objectives.

(a) Purpose. The purpose of the PF zoning district is to accommodate and allow for areas owned by, dedicated to, purchased, or acquired by public or quasi-public entities such as the City or any special district or governmental authority which are not compatible with the purpose and objectives of the HARD or HAP districts.

(b) Objectives. The objectives of the PF zoning district are to allow for such uses that are dedicated to serving the public, to minimize the adverse impacts and adjacent uses and the community.
Sec. 16-126. Use regulations.

(a) Permitted principal uses.

(1) Public buildings;

(2) Public garages;

(3) Maintenance facilities and shops dedicated to a public use;

(4) Public schools;

(5) Public water and sewer facilities;

(6) Public parking lots;

(7) CMRS facilities in accordance with Article XVIII of this Chapter 16 of the Black Hawk Municipal Code;

(8) Fire protection facilities; and

(9) Other facilities dedicated to a public use by a public or quasi-public entity.

(b) Permitted accessory uses. Uses which are customarily incidental to any of the principal uses and are located on the same lot

(c) Dimensional regulations.

(1) Minimum lot area: none.

(2) Minimum lot dimensions:

a. One hundred (100) feet deep.

b. Forty (40) feet wide.

(3) Minimum setbacks.

a. Front yard: zero (0) feet.

b. Side yard: ten (10) feet.

c. Rear yard: twenty (20) feet.

(4) Maximum height: forty-five (45) feet.

(Ord. 2013-14 §4)

Secs. 16-127—16-130. Reserved.

ARTICLE VI

Overlay Districts

Division 1

Historic and Architectural Review Overlay District (HAO)

Sec. 16-131. General purpose.

The Historic and Architectural Review Overlay District is created to enhance and preserve the unique historic and architectural features contained with the City. The requirements of the provisions set forth in this Article VI shall be in addition to the zoning district requirements found within this Chapter. (Ord. 94-11 §1, 1994; Ord. 99-40 §1)

Sec. 16-132. Regulations.

All new development and exterior renovations shall comply with Section 16-368 of this Chapter. This Chapter applies to all zoning districts located in the City. (Ord. 94-11 §1, 1994; Ord. 2009-13 §1)

Division 2

Floodplain Overlay District (FPO)

Sec. 16-133. General purpose.

The Floodplain Overlay District is created to protect the general health, safety and welfare of area residents and property owners. (Ord. 94-11 §1, 1994)

Sec. 16-134. Regulations.

All new developments in the floodplain district, as defined by the Federal Emergency Management Agency (FEMA) in 1984, and adopted in Chapter 18, Article XI of this Code
shall be subject to the regulations contained therein. (Ord. 94-11 §1, 1994)

Division 3
Planned Unit Development (PUD)

Sec. 16-135. General purpose.

The PUD Overlay Zone District is created to facilitate the achievement of the purposes and objectives of this Chapter, the Comprehensive Plan and other City-wide plans adopted by the City when the applicant can demonstrate that flexibility from the provisions of the existing zoning will result in higher quality development and when one (1) or more of the following purposes can be achieved:

(1) The provision of necessary commercial, recreational and educational facilities conveniently located to housing;
(2) The provision of well located, clean, safe and pleasant limited industrial sites involving a minimum of strain on transportation facilities;

(3) The encouragement of innovations in residential, commercial and limited industrial development and renewal so that the growing demands of the population may be met by greater variety in type, design and layout of buildings and by the conservation and more efficient use of open space ancillary to said buildings;

(4) The encouragement of a more efficient use of land and of public services, or private services in lieu thereof, and to reflect changes in the technology of land development so that resulting economics may inure to the benefit of those who need homes;

(5) A lessening of the burden of traffic on streets and highways;

(6) Conservation of the value of the land; and

(7) Preservation of the site's natural characteristics. (Ord. 94-11 §1)

Sec. 16-136. General regulations.

(a) Applicability and scope. Applications for planned unit development zoning may be made for land located in any zoning district.

(b) Conformity with the City's comprehensive plan required. No PUD shall be approved unless it is found by the Board of Aldermen to be in general conformity with the City's Comprehensive Plan.

(c) Approval conditions. The Board of Aldermen may approve a proposed PUD overlay designation upon a finding that it will implement the purposes of this Chapter and will meet the purposes, standards and requirements set forth in this Section.

(d) PUD Master Plan. The approved PUD zoning and the approved PUD plan along with all exhibits are inseparable, and a PUD shall not be established without the approval of the related PUD plan. The approved PUD zoning and the approved PUD plan and all exhibits together establish the uses permitted, character of the development and any modification to the zoning regulations which were theretofore applicable.

(e) Minimum land area. The minimum size of a parcel of land that may comprise a PUD is any lot or parcel of record within the City. (Ord. 94-11 §1)

Sec. 16-137. Permitted uses.

In general, all permitted and special review uses in any zoning district may be allowed in a PUD, subject to the provisions of this Chapter.

(1) Internal compatibility of design elements. It is recognized that certain individual land uses, regardless of their adherence to all the design elements provided for in this Chapter, might not exist compatibly with one another. Therefore, a proposed PUD shall be considered from the point of view of the relationship and compatibility of the individual elements of the plan and no PUD shall be approved which contains incompatible elements.

(2) Uses specified.

a. Subsequent to approval of a PUD, uses allowed within a PUD shall be limited to those specifically listed or to those in underlying zone district.
b. Uses shall be indicated in the PUD ordinance and on the PUD plan and shall use the symbols indicated in the sections of the zoning districts.

c. PUDs with a net area of less than one (1) acre may be limited by the Board of Aldermen to the uses and densities allowed in the zoning district on which the site of the proposed PUD is located or to those densities or uses allowed in any zoning district immediately adjacent to the proposed PUD site.

(3) Residential density; restrictions. The maximum allowable residential density in a planned unit development shall be those indicated in the residential development standards.

(4) Common open space; area required. Twenty-five percent (25%) of the total area within the boundary of any PUD shall be devoted to usable and accessible common open space; provided, however, that the Board of Aldermen may reduce such requirement if it finds that such decrease is warranted by the design of and the amenities and features incorporated into the plan and that the needs of the occupants of the PUD for common open space can be met in the proposed PUD and the surrounding area.

(Ord. 94-11 §1; Ord. 98-33 §6)

Sec. 16-138. Development standards.

(a) Modification of development standards of this Chapter.

(1) At the time of zoning a PUD, the Board of Aldermen may modify the specifications, standards or requirements of this Chapter (including but not limited to setbacks, yard requirements, street graphics, parking and landscape requirements and supplementary regulations) when development standards contained in the proposed PUD specifically establish different specifications, standards and requirements applicable to uses in that planned unit development.

(2) Unless specifically modified by development standards approved by the Board of Aldermen as a part of the ordinance creating the PUD, uses within a PUD shall comply with the development standards and occupancy restrictions applicable to the underlying zone district.

(3) Lot area and coverage, setbacks and clustering. In a multi-lot PUD the averaging of lot areas shall be permitted to provide flexibility in design and to relate lot size to topography, but each lot shall contain an acceptable building site. The clustering of development with usable common open areas shall be permitted to encourage provision for and access to common open areas and to save street and utility construction and maintenance costs. Such clustering is also intended to accommodate contemporary building types which are not spaced individually on their own lots but share common side walls, combined service facilities or similar architectural innovations, whether or not providing for separate ownership of land and buildings.

(b) Site plan criteria; requirements generally. The PUD shall meet the following site plan criteria unless the applicant can demonstrate that one (1) or more of them is not applicable or that another practical solution has been otherwise achieved:

(1) The PUD shall have an appropriate relationship to the surrounding area, without having unreasonable adverse effects on the surrounding area.

(2) The PUD shall provide an adequate internal street circulation system designed for the type of traffic generated, safety, separation from living areas, convenience and
access. Private internal streets may be permitted, provided that adequate access for police and fire protection is maintained and provisions for using and maintaining such streets are imposed upon the private users and approved by the Board of Aldermen. Bicycle traffic shall be provided for if appropriate for the land use.

(3) The PUD shall provide parking areas in conformance with the minimum site development standards of this Chapter in terms of number of spaces for each use, location, dimensions, circulation, landscaping, safety, convenience, separation and screening.

(4) The PUD shall provide common open space adequate in terms of location, area and type of the common open space and in terms of the uses permitted in the PUD. The PUD shall strive for optimum preservation of the natural features of the terrain.

(5) The PUD shall provide for a variety in housing types and densities, other facilities and common open space.

(6) The PUD shall provide adequate privacy between dwelling units.

(7) The PUD shall provide pedestrian ways adequate in terms of safety, separation, convenience, access to points of destination and attractiveness.

(8) The maximum height of buildings may be increased above the maximum permitted for like buildings in other zoning districts in relation to the following characteristics of the proposed building:

a. Its geographic location;

b. The probable effect on surrounding slopes and mountain terrain;

c. Unreasonable adverse visual effects on adjacent sites or other areas in the vicinity;

d. Potential problems for adjacent sites caused by shadows, loss of air circulation or loss of view;

e. Influence on the general vicinity, with regard to extreme contrast, vistas and open space;

f. Uses within the proposed building; and

g. Fire protection needs. (Ord. 94-11 §1, 1994)

Sec. 16-139. Supplementary regulations.

(a) Common open space; maintenance requirements. The common open space of a PUD may be owned and maintained by the property owners within the PUD or by an organization chosen therefrom or thereby. In the event that the organization established to own and maintain open space or any successor organization shall at any time after establishment of the PUD fail to maintain the common open space in reasonable order and condition in accordance with the plan, the Board of Aldermen may serve written notice upon such organization or upon the residents of the PUD setting forth the manner in which the organization has failed to maintain the common open space in reasonable condition. Said notice shall include a demand that such deficiencies of maintenance be cured within thirty (30) days thereof and shall state the date and place of a hearing thereon which shall be held within fourteen (14) days of the notice. At such hearing the Board of Aldermen may modify the terms of the original notice as to deficiencies and may give an extension of time within which they shall be cured. If the deficiencies set forth in the original notice or in the modifications thereof are not cured within
said thirty (30) days or any extension granted, the Board of Aldermen, in order to preserve the taxable values of the properties within the PUD and to prevent the common open space from becoming a public nuisance, may enter upon said common open space except when the same has been voluntarily dedicated to the public by the owners. Before the expiration of the year, the Board of Aldermen shall, upon its initiative or upon the written request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing, upon notice to such organization or to the residents of the PUD, to be held by the Board of Aldermen, at which hearing such organization or the residents of the PUD shall show cause why such maintenance by the Board of Aldermen shall not, at the election of the Board of Aldermen, continue for a succeeding year. If the Board of Aldermen determines that such organization is ready and able to maintain the common open space in reasonable condition, the Board of Aldermen shall cease to maintain such common open space at the end of said year. If the Board of Aldermen determines such organization is not ready and able to maintain the common open space in a reasonable condition, the Board of Aldermen may, in its discretion, continue to maintain the common open space during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter. The cost of such maintenance by the Board of Aldermen shall include actual cost, plus overhead, plus twenty-five percent (25%) and shall be paid by the owners of properties within the PUD that have a right of enjoyment of the common open space, and any unpaid assessments shall become a tax lien on said properties. The Board of Aldermen shall file a notice of such lien in the office of the County Clerk and Recorder upon the properties affected by such lien within the PUD and shall certify such unpaid assessments to the County Commissioners and the County Treasurer for collection, enforcement and remittance in the manner provided by law for the collection, enforcement and remittance of general property taxes.

(b) Occupancy or use restrictions prior to approval. Notwithstanding the overlay designation of an area as PUD, no portion thereof shall be used or occupied otherwise than as was permitted immediately prior to the approval of such overlay designation.

(c) Development schedule; completion in stages; time limits.

1. The applicant must begin development of the PUD within one (1) year from the time of its final approval; provided, however, that the PUD may be developed in stages. The applicant must complete the development of each stage and of the PUD as a whole in substantial compliance with the development schedule approved by the Board of Aldermen.

2. If the applicant does not comply with the time limits imposed by the preceding subsection, the Board of Aldermen shall review the PUD and may revoke approval for the uncompleted portion of the PUD, require that the PUD be amended or extend the time for completion of the PUD.

3. Each stage within a PUD shall be so planned and so related to existing surroundings and available facilities and services that failure to proceed to a subsequent stage will not have a substantial adverse impact on the PUD or its surroundings.

4. If a PUD contains residential and nonresidential uses, the nonresidential uses may only be constructed in advance of residential uses if the Board of Aldermen finds that such phasing is consistent with sound
principles or ordered development and will have no substantial adverse effect on the quality or character of the PUD.

(d) Plan enforcement and modifications; authority and procedures.

(1) The provisions of the plan relating to the use of land and the location of the common open space shall run in favor of the City and shall be enforceable in law or equity by the City without limitation on any powers or regulation otherwise granted by law.

(2) All those provisions of the plan authorized to be enforced by the City may be modified, removed or released by the City subject to the following:

a. No modification, removal or release of the provisions of the plan by the City shall affect the rights of the residents, occupants and owners of the PUD to maintain and enforce those provisions by law or in equity;

b. No substantial modification, removal or release of the provisions of a PUD plan by the City shall be permitted except upon a finding by the Board of Aldermen, following a hearing upon notice as required, that the modification, removal or release is consistent with the efficient development and preservation of the entire PUD, does not affect in a substantially adverse manner either the enjoyment of land abutting upon or across the street from the PUD or the public interest, and is not granted solely to confer a special benefit upon any person.

(3) Residents and owners of the PUD may, to the extent and in the manner expressly authorized by the provisions of the plan, modify, remove or release their rights to enforce the provisions of the plan, but no such action shall affect the right of the City to enforce the provisions of the plan.

(e) Procedures for establishing vested property rights. This Section defines a site specific development plan to implement Article 68 of Title 24, C.R.S., for real property located entirely within the Core Gaming, Millsite Gaming, Transitional Gaming and Commercial/Business Services or a combination of such zone districts.

(1) A site specific development plan under this Section means a planned unit development plan which is submitted to the City by a landowner of real property located within one (1) of the zoning districts described herein, which describes with reasonable certainty the type and intensity of use for a specific parcel of real property as required by this Article. What constitutes a site specific development plan under this Section that would trigger a vested property right shall be finally determined by the Board of Aldermen pursuant to this Article and upon an agreement entered into between the City and the land owner (the "Site Specific Development Plan Agreement").

(2) If the applicant wishes the approval of the site development plan to create vested property rights pursuant to Article 68 of Title 24, C.R.S., the plan shall include a statement that it is being submitted for designation as a site specific development plan. Failure to include such statement or to comply with any other condition of this Section regarding site specific development plans shall result in no vested property rights being created by the approval or conditional approval of the site development plan.
(3) If approved, the effective date of the approval shall be the effective date of the resolution approving the site specific development plan. The resolution of the Board of Aldermen approving the site specific development plan and agreement shall be accompanied by any terms or conditions imposed on the site specific development plan.

(4) Approval of a site development plan under this Section shall be valid for three (3) years after the date of the approval or approval with conditions by the Board of Aldermen. If the applicant has not obtained final plat or site plan approval under this Code for the property within said time or the applicant fails to abide by the terms and conditions of the site specific development plan and agreement, the approval of the site specific development plan shall be rescinded.

(5) Each site specific development plan, upon approval or conditional approval by the City, shall contain a statement as follows: "This plan constitutes a site specific development plan as defined in §24-68-101, et seq., C.R.S., and Ordinance No. ______ of the City of Black Hawk." [and, if applicable] "The terms and conditions of such approval are contained in Resolution No. ______ adopted by the City on __________ and available at City Hall, 201 Selak Street, Black Hawk, Colorado." In addition, a notice describing the type and intensity of use proposed, the specific parcel or parcels of property affected, the terms and conditions of any approval and stating that a vested property right pursuant to Article 68 of Title 24, C.R.S., has been created shall be published once, not more than fourteen (14) days after approval of the site specific development plan, in a newspaper of general circulation within the City by the landowner.

(6) Vested property rights procedures and requirements.

a. No vested property rights may be created or site specific development plan approved except in compliance with the requirements of this Article and Section 16-362 of this Code.

b. A property right which is vested as provided herein shall be vested for a period of three (3) years from the date of approval of the site specific development plan upon compliance with all terms and conditions of such approval. This vesting period shall not be extended by any amendments to the site specific development plan, unless expressly authorized in writing by the City.

c. Approval of a site specific development plan shall not constitute an exemption from or waiver of any other provisions or requirements of the City pertaining to the development and use of the property adopted or applicable before or after the approval of a site specific development plan including, but not limited to, subdivision and site plan requirements contained in this Code.

d. Nothing in this Section is intended to create a vested property right, but only to implement the provisions of Section 24-68-101, et seq., C.R.S. In the event of a repeal of said statute or a judicial determination invalidating or declaring unconstitutional part or all of said statute, portions of this Article regarding approval of site specific development plans or creation of vested property rights shall be deemed repealed and the provisions hereof no longer effective, or, in the event...
only a portion of said statute is declared void or unconstitutional, then the portion of this Article corresponding thereto shall be deemed repealed and no longer effective.

e. Waiver or forfeiture of vested rights. Failure to abide by any terms or conditions imposed by the City on the approval of any site specific development plan or agreement shall constitute a forfeiture by the landowner of any vested right created by the plan. (Ord. 94-11 §1; Ord. 98-63 §1)

Sec. 16-140. Minimum setbacks for rock walls on certain streets.

Subject to approval by the City, the minimum setback for that portion of a lot that is adjacent to a rock wall that supports Marchant or High Streets in the City may be reduced to four (4) feet if the property owner of such lot: (1) provides the City with a four-foot permanent easement across that portion of such lot immediately adjacent to a rock wall, which allows the City to construct, reconstruct or replace such rock wall within the easement; and (2) provides the City with a temporary construction easement to occupy such lot to construct, reconstruct or replace such rock wall. (Ord. 99-24 §2; Ord. 99-24 §2)

Secs. 16-141—16-160. Reserved.

ARTICLE VII

Application of General Development Standards

Sec. 16-161. Use of standards.

In addition to the requirements contained elsewhere in this Chapter, all uses of land and structures within the City shall be governed by the general development standards contained in Articles VI through XIII of this Code. (Ord. 94-11 §1)

Sec. 16-162. Purpose.

(a) The purpose of the general development standards contained herein is to provide standards for general lot requirements; utilities; recreation vehicles; nuisances, disturbances and emissions; geologic and environmental hazards; off-street parking, signage and landscaping; the organization and layout of buildings, parking areas and landscaped areas and guidelines on building design so as to promote the general health, safety and welfare of residents of the community.

(b) The intent of this Article is to encourage the creation of safe, adequate and attractive facilities and to minimize views of unattractive uses or activities through use of sound design principles and establishment of minimum requirements. The standards set forth herein are recognized as enhancing the compatibility of dissimilar uses and strengthening of property values. (Ord. 94-11 §1, 1994; Ord. 2018-2 §3)

Sec. 16-163. Applicability.

The general requirements and development standards of this Chapter shall not be retroactive on existing uses; however, these standards shall apply to all uses in all zoning districts hereunder the following circumstances:

(1) New buildings and uses of land.

(2) Additions involving expansion of the gross floor area or developed site area by twenty percent (20%) or more above that in existence prior to the effective date of the ordinance codified herein.

(3) There is a change in the use of the building or land which requires a change in the zoning district or a special review use permit. (Ord. 94-11 §1, 1994)

Sec. 16-164. Administration.

Prior to issuance of a building permit, conditional use permit or special review use permit
or granting of a change in use in any zoning district for any property, the applicant shall demonstrate that the property will comply with all applicable regulations in this Chapter:

(1) All buildings, parking areas, landscaping, signs and other improvements addressed by the development standards in this Chapter shall be constructed and installed in accordance with the approved plans prior to issuance of a certificate of occupancy for the building or use.

(2) The Chief Building Official may allow certain improvements to be constructed or installed within an agreed upon time allowing for seasonal changes. Such arrangements may involve performance bonds or other methods as deemed appropriate by the Chief Building Official to assure eventual compliance with this Chapter. (Ord. 94-11 §1, 1994)

Secs. 16-165—16-180. Reserved.

ARTICLE VIII

General Lot Requirements

Sec. 16-181. Spacing requirements.

(a) Every building shall be located and maintained on a lot as defined in this Chapter.

(b) No lot shall be divided to contain more dwellings than are permitted by the regulations of the zoning district in which it is located.

(c) No space needed to meet the width, yard, area, open space, lot coverage, parking or other requirements of this Chapter for a lot or building may be sold or leased away from such lot or building.

(d) No parcel of land which has less than the minimum width, depth and area requirements for the zone in which it is located may be divided from a larger parcel of land for the purpose, whether immediate or future, of building or development as a lot.

(e) Each lot or parcel in separate ownership shall have at least twenty (20) lineal feet of frontage on a public street unless otherwise provided elsewhere in this Chapter or under planned unit development plans. Each principal building devoted wholly or in part to residential use shall be located on a lot contiguous to a public street with permanent access to the public street sufficient to allow ingress and egress for emergency vehicles providing emergency services to the principal building. (Ord. 94-11 §1, 1994)

Sec. 16-182. Setback requirements

(a) Where a lot in a commercial zone district shares a common side lot line with a lot in a residential district, the required side yard setback of the residential district shall apply along the common lot line to the property in the commercial zone district. Where a commercial corner lot immediately adjoins a residential lot, and the side yard lot line of the residential lot coincides with the rear lot line of the commercial lot, then the minimum side yard setback of the commercial lot on the side adjacent to the street on which the residential lot fronts shall be at least one-half (½) of the required front yard setback applicable to the residential lot.

(b) When a vacant lot is bordered on two (2) sides by previously constructed buildings both of which do not meet the required front yard setback applicable to the district, the required front yard setback for the vacant lot shall be established as the average front yard setback of the two (2) existing adjacent buildings. Where a vacant lot is bordered on only one (1) side by a previously constructed building which does not meet the required front yard setback for the district, the required front yard setback for the vacant lot shall be established as the average
front yard setback of the adjacent building and the minimum required front yard setback for the district.

(c) If a lot is not rectangular in shape and a building is constructed so that one (1) side of the building is parallel to an adjacent street or right-of-way, the setback between the building line and that lot line which is not parallel to the building line may be calculated as the average of the nearest and farthest distances between the building corners and the lot line, except that the minimum setback at any point shall not be less than three (3) feet.

(d) There is no setback requirement for property located between State Highway 119 and North Clear Creek and State Highway 119 and Main Street south of Mill Street for those improvements relating to a municipally owned, or Title 32 sanitation district owned, public utility facility. (Ord. 94-11 §1, 1994)

Sec. 16-183. Utilities.

All new transmission and distribution lines shall be placed underground, unless the Board of Aldermen authorizes in writing overhead installation. Such authorization shall be granted if the Board of Aldermen finds at a hearing that overhead installation is necessary, no reasonable alternative to overhead lines exists and overhead installation will meet the purposes of this Chapter. (Ord. 94-11 §1, 1994)

Sec. 16-184. Recreation vehicles and trailers.

Except as permitted in the Environmental Character Preservation District, Low Intensity - Mixed Use District and Limited Industrial District, no recreational vehicle or construction and truck semi-trailers shall be used in any zoning district of the City for a dwelling unit, accessory building, storage, home occupation or other use permitted within any zoning district.

(Ord. 2018-2 §4)

Secs. 16-185—16-200. Reserved.

ARTICLE IX

Reserved*

Secs. 16-201—16-220. Reserved.

ARTICLE X

Nuisances, Disturbances and Emissions

Sec. 16-221. Nuisances, disturbances and emissions generally.

Nuisances, disturbances and emissions in all zoning districts shall be regulated according to the provisions set forth in this Code. All potential nuisances shall be mitigated by appropriate means and such mitigation shall be demonstrated in the site development plan. Nuisance mitigation shall be a continuing obligation of all developments. Nuisances shall be as defined in Chapter 7 of this Code. In addition, all site development plans shall meet the following minimum standards:

(1) Solid waste handling and storage areas shall be screened from public view by construction of a fence or wall, by a landscaped buffer or berm, or within an enclosed building which is incidental to the primary structure; and

(2) Storm water or melt water run-off shall be handled on site or channeled in a way that does not adversely impact neighboring properties.

(3) Trash storage areas in nonresidential districts shall be screened from public view

*Editor's note: Ord. No. 2018-2, § 5, adopted February 28, 2018, repealed §§ 16-201, 16-202, which pertained to recreational vehicles, trailers, mobile homes and manufactured homes. See the Disposition of Ordinances Table for complete derivation.
by the construction of a fence or wall. (Ord. 94-11 §1; Ord. 94-26 §1; Ord. 98-33 §7; Ord. 99-7 §3)

Secs. 16-222—16-240. Reserved.

ARTICLE XI
Geologic and Environmental Hazards

Sec. 16-241. Geologic and environmental hazards generally.

Any land use or development in any of the zoning districts is subject to the requirements of Chapter 18, Article XII of this Code. Said Article requires testing for and mitigation of geologic or environmental hazards for all development and excavation within the City. (Ord. 94-11 §1)

Secs. 16-242—16-260. Reserved.

ARTICLE XII
Off-Street Parking

Sec. 16-261. Purpose.

(a) The purpose of this Article is to ensure that all land uses are served by an adequate supply of well planned and designed parking. The off-street parking article provides minimum standards for the development of parking areas in conjunction with the various uses permitted in this Chapter. The purpose of this Section is to require that the owner of a land use provide sufficient quantities of parking for the land use. In the event the owner of a land use cannot or chooses not to provide sufficient quantities of parking on the same site as the land use generating the need for parking, or on other real property owned by the owner of the land use that is located within the Commercial/ Business Services or Gaming and Entertaining Districts of the City (the "parking property") which is subject to a Parking Agreement as described in Section 4-113(7) of this Code, the owner of the land use shall provide off-street parking by contribution to a parking fund which will finance the construction of nearby and remote City-owned lots. The construction of nearby and remote City-owned lots will allow for a comprehensive parking and transit shuttle service for the City.

(b) The intent of these standards is to require attractive, convenient, efficiently developed parking areas which provide sufficient quantities of parking spaces with ample area for fire lanes, maneuvering, snow storage, retention of drainage, landscaping and public safety.

(c) The standards herein governing the required number of off-street parking spaces are considered to be minimum standards. It is the obligation of the owner of a use which generates the need for parking to provide sufficient quantities of off-street parking for the particular land use.

(d) Because of the historic nature of the downtown area, the intent to make the best use of the Commercial Gaming District and the desire to emphasize the pedestrian nature of these areas, off-street parking in these areas may not be feasible or desirable. In these districts, provisions will be made for a contribution to a parking fund which will finance construction of nearby and remote City-owned lots. Contribution will be calculated based upon the uses by area (square feet) within the given structure. The fees in lieu of off-street parking spaces are addressed in Ordinance 91-10, as amended. (Ord. 94-11 §1, 1994; Ord. 97-26 §1)

Sec. 16-262. Application and administration.

(a) Off-street parking shall be provided as set forth in this Chapter in association with any use generating demand for parking.

(b) The proposed method of complying with this Article shall be indicated on all plans required to be submitted to the Planning Department as a part of an application and on any plot
plan submitted for a building permit. No off-street parking shall be used or occupied without first obtaining a certificate of occupancy or use. Any off-street parking that was maintained and operated pursuant to a valid conditional use permit on February 25, 1999, is considered a legal nonconforming use and is not required to obtain a certificate of use.

(c) When any addition to or enlargement of an existing building or use or a change in use increases the building or the developed area of the use or the parking requirements of the building or structure, the parking requirements of this Chapter must be met. Moreover, if the addition, enlargement or change in use increases the building or the developed area of the use, or the required parking by twenty percent (20%) or more in a nonresidential district or thirty percent (30%) or more in a residential district, then the parking for the entire building shall be brought into conformance with all requirements of this Chapter, including required number of spaces, access, landscaping, lighting, screening and other applicable standards. However, the requirement set forth above shall not apply if the owner in a residential district can demonstrate that his or her property is used exclusively for one (1) single-family dwelling unit. Once the owner of a dwelling in a residential district is granted a conditional or special use permit, he or she must immediately comply with this Chapter.

(d) Whenever a building permit has been granted and the plans so approved for off-street parking, the subsequent use of such property shall be deemed to be conditional upon the unqualified continuance and availability of the parking provisions contained in such plans.

(e) Any change in the use of a building or lot which increases the off-street parking as required under this Chapter shall be unlawful and a violation of this Chapter until such time as the off-street parking complies with the provisions of this Chapter. (Ord. 94-11 §1, 1994; Ord. 97-26 §3; Ord. 99-8 §1)

Sec. 16-263. Number of parking spaces required.

(a) All uses shall, at a minimum, provide the number of off-street parking spaces listed below. Buildings with more than one (1) use shall provide parking required for each use.

<table>
<thead>
<tr>
<th>Use</th>
<th>Number of Spaces Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Studio or 1 bedroom:</td>
<td>1.5/dwelling unit</td>
</tr>
<tr>
<td>2 or more bedrooms:</td>
<td>2/dwelling units</td>
</tr>
<tr>
<td>In addition, multi-family dwellings:</td>
<td>1/guest space per 5 dwelling units</td>
</tr>
<tr>
<td>Hotels and motels:</td>
<td>1.12/room, suite/individual exit</td>
</tr>
<tr>
<td>Bed and breakfasts and short term rentals:</td>
<td>1/guest room in addition to those required for related residential use</td>
</tr>
<tr>
<td>Schools, academies, colleges, trade or business schools:</td>
<td>1/instructor and/or administrative personnel and 0.5/student</td>
</tr>
<tr>
<td>Health &amp; athletic clubs, aerobics, recreational, amusement &amp; entertainment facilities:</td>
<td>1/125 sf.</td>
</tr>
<tr>
<td>Theaters &amp; public assembly, places of worship, social clubs, funeral home &amp; crematoriums:</td>
<td>1/space per 3 seats provided within the facility</td>
</tr>
<tr>
<td>General office:</td>
<td>1/250 sf. (minimum 3/business)</td>
</tr>
<tr>
<td>Medical office, clinic:</td>
<td>1/135 sf.</td>
</tr>
<tr>
<td>Hospitals:</td>
<td>1/2 beds &amp; 1/resident doctor &amp; 1/2 employees (full or part-time) per shift</td>
</tr>
<tr>
<td>Dining &amp; drinking establishments:</td>
<td>1/75 sf.</td>
</tr>
<tr>
<td>if dancing and/or entertainment is provided:</td>
<td>1/50 sf.</td>
</tr>
<tr>
<td>Outdoor dining &amp; drinking areas:</td>
<td>1/75 sf. x (outdoor dining area) (gross indoor area)</td>
</tr>
<tr>
<td>Use</td>
<td>Number of Spaces Required</td>
</tr>
<tr>
<td>---------------------------------------------------------------------</td>
<td>----------------------------------------------------------------</td>
</tr>
<tr>
<td>Gaming establishments:</td>
<td>1/75 sf. of gaming area with seating, 1/50 sf. of gaming area or 1 per gaming device for areas without seating, whichever is more, in addition to those spaces required for other uses as provided in this Chapter.</td>
</tr>
<tr>
<td>General commercial and retail sales:</td>
<td>1/300 sf.</td>
</tr>
<tr>
<td>Manufacturing &amp; industrial uses, contractors’ yards, business services, printing, fabrication plants:</td>
<td>1/500 sf.</td>
</tr>
<tr>
<td>Furniture store, warehousing &amp; storage facilities:</td>
<td>1/500 sf. for first 10,000 sf. and 1/5,000 sf. for remaining area</td>
</tr>
<tr>
<td>Mini-storage facilities</td>
<td>1/5,000 sf.</td>
</tr>
</tbody>
</table>

**Note:** In Industrial Zone Districts, the applicant may demonstrate to the Board of Aldermen that the required number is too high, in which case, if approved by the Board of Aldermen, the applicant may develop the approved number of spaces but shall provide additional area for expanded parking, and such area shall be landscaped with ground cover.

(Ord. 94-11 §1; Ord. 95-11 §1; Ord. 97-26 §4; Ord. 98-33 §8; Ord. 2001-15 §12; Ord. 2018-10 §5)
Sec. 16-264. Parking area design.

(a) Calculation of parking space requirements. Where parking facilities are combined and shared by two (2) or more uses:

(1) The off-street parking space required for two (2) or more uses having the same or different standards for determining the amount of required off-street parking spaces shall be the sum of the standards of all the various uses.

(2) Tandem arrangements of parking shall only be allowed in valet parking lots in commercial zoning districts and in residential zoning districts for structures of four (4) units or less, but shall not be considered as meeting the standards of this Chapter for any other use. Only the first tandem spaces shall be counted towards satisfying the required number of parking spaces in other nonresidential uses.

(3) Measurement of floor area. Floor areas used in calculating the required number of parking spaces shall be gross floor areas of the building calculated from the outside wall without regard to specific inside use. In mixed use facilities:

a. Calculations shall be based on gross square footage of each identifiable use within the building;

b. An office shall include general office area, gaming cash count areas and vaults; a gaming or restaurant use shall include gaming, cashiers, restaurants, kitchens, freezers and bar areas; and a hotel use shall include all square footage dedicated solely to the hotel use;

c. Uses which serve more than one (1) of the uses, such as bathrooms, mechanical rooms, stairwells, circulation, air shafts, storage areas and elevators shall be prorated based on the area of each identifiable use; and

d. The total square footage of each identifiable use shall be the same as the gross floor area calculated from outside wall to outside wall.

(4) New construction projects with access to Highway 119 and Highway 279 or proposed addition or reconstruction projects which will create an increase of twenty percent (20%) or more in traffic demand utilizing an existing access point to Highway 119 or Highway 279 or which meet other criteria specified by the State Department of Transportation shall require an access permit from the State Department of Transportation.

(b) Parking area design standards. All parking areas, driveways and maneuvering areas shall be constructed to the dimensional standards shown in Figure A. The standard parking space shall measure eight (8) feet six (6) inches by eighteen (18) feet. All parallel parking spaces shall measure eight (8) feet six (6) inches by twenty-two (22) feet. Recreational vehicle parking spaces shall measure ten (10) feet by twenty-four (24) feet.

(1) Dimensional standards:

(The dimensional standards contained within Figure A are located on the next page.)
PARKING AREA DIMENSIONS

Figure A

PARKING DIMENSIONS

<table>
<thead>
<tr>
<th>Angle</th>
<th>Minimum Stall Width</th>
<th>Vehicle Projection</th>
<th>Aisle</th>
<th>Typical Module</th>
<th>Interlock Reduction</th>
<th>Overhang</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>valet</td>
<td>std.</td>
<td>valet</td>
<td>std.</td>
<td>one way</td>
<td>two way</td>
</tr>
<tr>
<td>PARALLEL</td>
<td>7' 6&quot;</td>
<td>8' 6&quot;</td>
<td>7' 6&quot;</td>
<td>8' 6&quot;</td>
<td>20'</td>
<td>20'</td>
</tr>
<tr>
<td>45°</td>
<td>7' 6&quot;</td>
<td>8' 6&quot;</td>
<td>16' 0&quot;</td>
<td>17' 6&quot;</td>
<td>20'</td>
<td>20'</td>
</tr>
<tr>
<td>60°</td>
<td>7' 6&quot;</td>
<td>8' 6&quot;</td>
<td>16' 0&quot;</td>
<td>18' 5&quot;</td>
<td>20'</td>
<td>20'</td>
</tr>
<tr>
<td>75°</td>
<td>7' 6&quot;</td>
<td>8' 6&quot;</td>
<td>16' 0&quot;</td>
<td>18' 8&quot;</td>
<td>20'</td>
<td>20'</td>
</tr>
<tr>
<td>90°</td>
<td>7' 6&quot;</td>
<td>8' 6&quot;</td>
<td>16' 0&quot;</td>
<td>17' 6&quot;</td>
<td>20'</td>
<td>20'</td>
</tr>
</tbody>
</table>

1. RECREATION VEHICLE PARKING SPACES SHALL MEASURE 10' X 24'.
2. PARKING LOTS SHALL COMPLY WITH AMERICANS WITH DISABILITIES ACT.
AMERICANS WITH DISABILITIES

ADA JULY 26, 1990

MINIMUM ACCESSIBILITY REQUIREMENTS

<table>
<thead>
<tr>
<th>TOTAL PARKING IN LOT</th>
<th>REQUIRED MINIMUM NUMBER OF ACCESSIBLE SPACES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 TO 25</td>
<td>1</td>
</tr>
<tr>
<td>26 TO 50</td>
<td>2</td>
</tr>
<tr>
<td>51 TO 75</td>
<td>3</td>
</tr>
<tr>
<td>76 TO 100</td>
<td>4</td>
</tr>
<tr>
<td>101 TO 150</td>
<td>5</td>
</tr>
<tr>
<td>151 TO 200</td>
<td>6</td>
</tr>
<tr>
<td>201 TO 300</td>
<td>7</td>
</tr>
<tr>
<td>301 TO 400</td>
<td>8</td>
</tr>
<tr>
<td>401 TO 500</td>
<td>9</td>
</tr>
<tr>
<td>501 TO 1000</td>
<td>2 % OF TOTAL</td>
</tr>
<tr>
<td>1001 AND OVER</td>
<td>20 PLUS 1 FOR EACH</td>
</tr>
<tr>
<td></td>
<td>100 OVER 1000</td>
</tr>
</tbody>
</table>

ACCESSIBLE PARKING SPACE DIMENSIONS

![Diagram showing accessible parking space dimensions]
(2) Setback for on-site parking adjacent to Highway 119. The Colorado Department of Transportation has not established the width or location of that portion of Highway 119 located between the junction of Highway 119 and Black Hawk Street and Chase Street in the City. The width of Highway 119 apparently varies from twenty-eight (28) feet to one hundred (100) feet in width. The width and location of Highway 119 must be established by the Colorado Department of Transportation in order to determine the setback for on-site parking adjacent to Highway 119.

(3) All parking areas shall be properly graded for drainage, provide on-site detention of run-off from precipitation and surfaced with concrete or asphaltic concrete or other acceptable surfacing, in conformance with specifications on file with the Public Works Department. They shall be maintained in good condition, free of weeds, dust, trash and debris.

(4) No more than two (2) driveways will be permitted per parcel. In parcels accommodating twenty (20) or more parking spaces, driveways must be separated by at least two hundred fifty (250) feet. In parcels with less than twenty (20) parking spaces, driveways must be separated by at least one hundred (100) feet.

(5) All lights used to illuminate parking spaces, driveways or maneuvering areas shall be so designed, arranged and screened so that the source of lighting shall not be visible from any point on adjoining lots or streets. All lighting fixtures, including security lighting facilities, shall be directed away from adjacent residential uses and public streets and shall not be of an intensity which unreasonably disturbs adjacent residential users or users of public streets and shall not be installed above a maximum height of fifteen (15) feet.

(6) Covered parking areas shall have an interior clear dimension of at least seven (7) feet high and shall comply with design specifications approved by the Building Official through the building permit process.

(7) Vehicular ingress and egress to public major or minor arterials from off-street parking shall be so combined, limited, located, designed and controlled with flared and/or channelized intersections as to direct traffic to and from such public right-of-way conveniently, safely and in a manner which minimizes traffic friction and promotes free traffic flow on the streets without excessive interruption.

(8) Parking spaces shall be marked and maintained on the pavement and any other directional markings or signs shall be installed as permitted or required by the City to ensure the approved utilization of space, direction of traffic flow and general safety.

(9) To ensure the proper maintenance and utilization of these facilities, public parking areas shall be designed so that a parked vehicle does not overhang any public property, walkway, landscaped area or bicycle path and shall be a minimum of four (4) feet from any walkway or bicycle path. A concrete or otherwise permanent curb, bumber, wheel stop or similar device shall be installed which shall be adequate to protect the public right-of-way, public sidewalk or planters from vehicular overhangs and to protect any structure from vehicular damage.

(10) Landscaping shall be required in accordance with Article XIII of this Chapter.
(11) Parking areas shall be enclosed around the circumference of the parking spaces by a fence no lower than forty-two (42) inches. Fencing materials shall be consistent with the provisions contained with the design standards for the City and must be approved by the Council.

(12) The parking lot may include one (1) building for parking lot attendants. The building must comply with all code requirements for any other building within the district, including but not limited to requirements for building materials, utilities, construction and maintenance; and the building must be approved by the Council. Plumbing facilities will not be required on the parking lot so long as nearby facilities are available for attendants at all times that a parking attendant is on duty.

(13) In the event the use of parking attendants is to be made at any time, there shall be provided, and the plans shall depict on the parking lot for which the application is made, an area for the transfer of the motor vehicle between the parking attendant or valet and the driver of the vehicle. In no event shall such area be in a public street or right-of-way or interfere with vehicular or pedestrian traffic on a public street, sidewalk or other right-of-way. (Ord. 94-11 §1, 1994; Ord. 99-8 §2; Ord. 2001-15 §13; Ord. 2009-23 §10)

Sec. 16-265. Residential parking permits.

(a) Permits for on-street parking.

(1) The Planning Director may determine that the parking of motor vehicles in residential areas by patrons of nearby commercial, industrial or institutional uses could:

a. Cause hazardous traffic conditions in the residential areas;

b. Produce auto emissions, noise, trash and refuse;

c. Unreasonably burden residents of the area in gaining access to their residences; or

d. Damage the character of those areas as residential districts and diminish the value of property in those areas.

Upon such determination, the Planning Director may post signs pursuant to this Section to limit the duration of or prohibit parking in these areas and, upon application, the Planning Director shall issue permits to residents of such areas who own and/or operate a motor vehicle allowing the vehicle to be parked in the block on which the owner of the vehicle resides as if there were no time limitation restrictions on such parking. The permit shall be affixed to the upper left-hand corner of the front window of the vehicle or in a location on the vehicle approved by the Planning Director.

(2) A resident permit shall be issued for a vehicle when proof of residence in the appropriate block based upon a current motor vehicle registration for the vehicle is provided and other proof of residence as may be reasonably required by the City. Seasonal residents who own or occupy a residence may obtain a permit by providing proof of ownership or occupancy of the residence. No additional permits shall be issued for a residence until the seasonal resident relinquishes all outstanding permits to the City.

(b) Permits for off-street, off-site parking.

(1) The Planning Director may determine that the parking of resident motor vehicles in residential areas without designated off-street residential parking for the purpose of accessing those residential areas could:

a. Cause hazardous traffic conditions in the residential areas; or
b. Unreasonably burden other residents of the area with off-street parking in gaining access to their residences.

Upon such determination, the Planning Director may post signs pursuant to this Chapter to limit the duration of resident parking and upon application, the Planning Director shall issue permits to residents of such areas who own and/or operate a motor vehicle, but who do not possess off-street parking, allowing the vehicle to be parked in the nearest public parking facility as if there were no time limit restrictions on such parking. The permit shall be affixed to the upper left-hand corner of the front window of the vehicle or in a location on the vehicle approved by the Planning Director.

(2) The City shall issue two (2) guest permits when proof of residence in the appropriate block is provided. A guest is defined as a temporary visitor to a residence who is invited by a resident to receive hospitality, to socialize or to perform services. The permit will allow guests to park their vehicle on the block where the residence is located as if there were no time limit restrictions on such parking.

a. It is unlawful for any resident to allow any person other than a guest to use a guest permit. It is unlawful for any person to use a guest permit in a manner not authorized by this Chapter. Guest permits are strictly nontransferable.

b. In the event that a resident loses a guest permit and requests a replacement, the City shall charge a replacement fee of fifty dollars ($50.00) for each such replacement permit requested.

c. In the event that a resident desires to hold a social gathering in which greater than two (2) guests shall be in attendance, the resident may obtain special guest permits from the City. Such special guest permits shall state the date and time of the social gathering and the estimated number of guests in attendance. Such special guest permits shall terminate at the conclusion of the social gathering. The number of special guest permits which may be granted shall be based on the number of parking spaces available on the block where the resident resides, as determined by the Chief of Police. (Ord. 94-11 §1)

Sec. 16-266. Parking impact fee.

In districts where off-street parking is discouraged because of historic preservation and lot area constraints, developers will be required to pay a parking impact fee in lieu of each required parking space (as determined according to the proposed uses and their respective square footages). The impact fee for an off-site parking space will be determined according to Chapter 4, Article VI of this Code. The City shall not accept conditional use parking as a substitute for the obligation to provide off-street parking by payment of impact fees to a parking fund as provided herein. (Ord. 94-11 §1)

Secs. 16-267—16-280. Reserved.

ARTICLE XIII

Landscaping

Sec. 16-281. Landscaping generally.

This Article establishes minimum standards for landscaping and site design; the City encourages developers and landowners to exceed these minimums whenever possible. (Ord. 94-11 §1)

Sec. 16-282. General requirements.

(a) Minimum percent of net site area required to be landscaped, exclusive of street
right-of-way and any required parking lot landscaping, shall be as follows:

(1) Residential districts: forty percent (40%).

(2) Nonresidential districts, excluding limited industrial: fifteen percent (15%).

(3) Limited industrial district: five percent (5%).

(b) Undeveloped areas. Any part of a site not used for buildings, parking, driveways, sidewalks, etc., shall be landscaped. All undeveloped building areas within partially developed commercial or industrial uses shall be landscaped with a ground cover to control dust and erosion.

(c) Obstructions. No walls, buildings or other obstructions to view in excess of three and one-half (3½) feet in height shall be placed on any corner lot within a triangular area formed by the curb lines and a line connecting them at points ten (10) feet from the intersection of the curb lines. Trees may be located within the triangle, provided that they are pruned high enough to permit unobstructed vision.

(d) Lighting. All outdoor lighting shall be directed down and screened away from adjacent properties and streets.

(e) Native vegetation, or low water usage vegetation on water conserving design precepts, shall be used whenever possible per the design standards for the City.

(f) Landscaped areas, adjacent to streets, vehicular parking and access areas, shall be protected by six-inch vertical concrete curbing, bumper lock or other approved method to minimize damage to landscaping by vehicular traffic.

(g) Streamside development. Upon development of a site through which an existing creek or stream flows, a pedestrian access and open space easement adequate to accommodate a 100-year flood or a ten-foot pedestrian easement, whichever is greater, as determined by the Board of Aldermen, shall be dedicated to the City for future development. Floodplain regulations do not allow any structure to be built unless it is one (1) foot above the 100-year flood elevation. An engineering analysis and/or conformance with the master drainage plan shall be required for any modification to the floodplain. Stream improvement shall include the areas on both sides of the stream and includes ten (10) feet from the ordinary high water line of said stream. The owners of such property are strongly encouraged to integrate the development of the creek, open space and pedestrian way into the development at the time of development. Said stream or creek should be restored, enhanced and maintained as a site amenity. Evidence of unnatural disturbance should be removed. Restoration and enhancement should include:

(1) Revegetation with plants indigenous to the area, including trees, shrubs and native grasses and wild flowers;

(2) An eight-foot-wide walkway constructed of materials approved by the City;

(3) Provision of lighting, benches and other amenities in accordance with conceptual plans adopted by the City for said improvements; and

(4) The developer of such property is encouraged to incorporate the development of the stream into any request for approval of development plans by the Board of Aldermen.
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(h) Landscape strips shall be established along all commercially zoned streets, between the public right-of-way and any buildings, parking lots, loading areas, storage areas or other improvements. The minimum requirements are:

(1) Adjacent to Highway 119: ten (10) feet wide (including the walkway); and any other commercial street: ten (10) feet.

(2) Trees shall be planted at the rate of one (1) tree per thirty-five (35) feet of lineal street frontage. A minimum of twenty-five percent (25%) of the required trees shall be mature and the remaining shall be a minimum size of fifteen (15) gallons.

(3) Shrubbery with a minimum size of five (5) gallons shall be planted in appropriate numbers to complement the placement of trees, but in no case shall be less than three (3) shrubs per thirty-five (35) feet of lineal street frontage.

(4) Clustering of trees and shrubbery shall be encouraged to accent focal points or landmarks and to provide variety to the streetscape. Contouring of the ground is encouraged.

(i) Common area landscaping. In any multifamily project or district, a minimum of two (2) trees per dwelling unit shall be required, exclusive of street trees and perimeter landscaping. A minimum of twenty-five percent (25%) of required trees shall be mature and the remaining shall be a minimum of fifteen (15) gallons in size.

(j) Parking lot landscaping.

(1) A minimum of five percent (5%) of all parking lots shall be landscaped. Such landscaping may occur on the perimeter or on parking islands within the lot.

(2) A minimum of one (1) tree shall be provided for every twelve (12) parking spaces. A minimum of twenty-five percent (25%) of required trees shall be mature and the remaining shall be a minimum of fifteen (15) gallons in size.

(3) Any landscaped area used for vehicular overhang shall not be counted towards the required landscaping. (Ord. 94-11 §1; Ord. 98-33 §9; Ord. 2009-23 §11)

Sec. 16-283. Streetscape requirements.

Development of individual properties along Gregory Street and Main Street will require participation in the development of a unified pedestrian facility and streetscape. This will include a sidewalk, a street-lighting system, landscaping and an irrigation system. The Board of Aldermen shall adopt the specifications and costs to develop a unified pedestrian facility and streetscape.

(1) There shall be a required ten-foot-wide sidewalk complete with lighting, bollards, railings and landscaping provided adjacent to commercially zoned property which is adjacent to Main Street or Gregory Street.

(2) When there is an existing structure prohibiting the provision of a ten-foot-wide sidewalk, the developer may meet this requirement within the right-of-way or if there is inadequate right-of-way width, the planned sidewalk improvements may be modified upon approval of the Board of Aldermen.

(3) All streetscape improvements shall be constructed in accordance with adopted plans for said improvements.
(4) When it is more feasible to do so as determined by the Board of Aldermen, the developer may make payment into a fund for the purpose of developing said streetscape improvements at a later time.

(5) Any improvements installed which will eventually serve other properties on the same block, such as development of a water source and required equipment for an irrigation system, may be done on a reimbursement basis for said improvements on a linear foot pro rata basis as other projects develop and use the system. (Ord. 94-11 §1; Ord. 98-33 §10)

Sec. 16-284. Storm drainage and detention basins.

(a) All storm water detention basins and drainage ways shall be landscaped. Such basins may not occupy more than fifty percent (50%) of any landscaped area fronting on a public street; except, where exceptional design or shallow depths are proposed for the retention basin, the Planning Director or City Engineer may permit a greater use of the frontage landscaped area.

(b) Detention basin and drainage ways shall be contoured and designed as an integral part of any landscaping. A natural appearance shall be sought and an engineered appearance or a ditch-like appearance shall not be acceptable. (Ord. 94-11 §1)

Sec. 16-285. Maintenance.

(a) All landscaping shall be reasonably maintained and any plant material shall be replaced within thirty (30) days of its demise or by an agreed upon date if seasonal conditions prohibit replacement within the thirty-day time requirement.

(b) Failure to maintain landscaping required with approval of a permit shall be a violation of this Chapter and applicable penalties may be imposed.

(c) The maintenance of landscaping in the public right-of-way in all zoning districts shall be the responsibility of the adjacent property owner, whether an individual, corporation or homeowner's association. (Ord. 94-11 §1, 1994)

Sec. 16-286. Screening.

Screening standards. The intent of all required screening is to completely hide stored materials from view of persons standing on the ground outside the storage area in the locations described in the particular section requiring the screening. If no particular location is specified, it shall be interpreted as screened from view on all sides.

(1) Height. All trash or refuse collection areas shall be enclosed by a six-foot-high solid wood fence or masonry wall, styled to match the material of adjacent walls or the main building on the site. No materials stored within an outdoor storage area or behind a screening fence, wall or structure shall be stacked or stored in a manner in which they exceed the height of the walls, fence or structure.

(2) Materials. Screening walls, fences or structures shall be constructed from durable materials suited to the City's climate and which will require low maintenance. Materials which are architecturally compatible with the primary building on the site or with the streetscape or landscaping of the site shall be used.

(3) Colors. Screening devices shall blend into the landscaping and not be so colored as to call attention to itself. Muted earth tones shall be used as opposed to bright colors.
(4) Maintenance. All walls, fences or structures shall be maintained in good condition or they shall be in violation of this Chapter. The owner of such fence, wall or screening structure may be cited for such violation and penalties enforced. (Ord. 94-11 §1, 1994)

Secs. 16-287—16-300. Reserved.

ARTICLE XIV

Reserved

Editor's note: Regulations concerning signs and outdoor commercial advertising devices, formerly Article XIV, are now located in Chapter 15 of this Code.

Secs. 16-301—16-320. Reserved.

ARTICLE XV

Administration

Sec. 16-321. Administration generally.

This Article describes the individuals and commissions responsible for administering this Chapter, enforcement and application procedures and submittal requirements. (Ord. 94-11 §1, 1994)

Sec. 16-322. Intent.

This Article establishes and prescribes the basic duties and operating procedures of the administrative entities responsible for administering and enforcing this Chapter. (Ord. 94-11 §1, 1994)

Sec. 16-323. Planning Director.

There is hereby established the office of Planning Director. The Planning Director shall be appointed by the City Manager and shall be charged with the responsibility for interpretation of and enforcement of this Chapter. In the absence of a Planning Director, the City Manager, or his or her designee, shall be charged with the administration and enforcement of this Article. (Ord. 94-11 §1; Ord. 98-33 §15)

Sec. 16-324. Chief Building Official.

There is hereby established the office of Chief Building Official. The Chief Building Official, under the direction of the Planning Director, shall have duties including the inspection of plans, structures and site improvements for compliance with the provisions of this Chapter and for issuance of permits for building construction and site improvements, conditional use permits, sign permits, certificates of occupancy and other duties as herein authorized. In meeting the responsibilities of the above duties, the Chief Building Official may solicit the assistance of other City officials, other agencies or consultants as deemed necessary. (Ord. 94-11 §1)

Sec. 16-325. Reserved.

Sec. 16-326. Board of Appeals.

(a) Appointment of the Board of Appeals. In accordance with the powers and authority of the Charter, the Board of Aldermen establishes a Board of Appeals of the City. The individual members of the Board of Aldermen are hereby appointed to the Board of Appeals. The Board of Appeals sitting as such is hereinafter referred to as the Board of Appeals or the Board. The Board shall elect from its membership a Chairman, Vice-Chairman and such officers as it may deem necessary at its first meeting during each calendar year. The City Clerk shall be responsible for recording and keeping of the minutes of the meetings.
(b) Powers. The Board of Appeals shall have the following powers:

(1) To hear and decide appeals from and review any order, requirement, decision or determination made by any administrative official of the City or the Board of Aldermen charged with the enforcement of this Chapter. The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as in its own opinion ought to be made in the premises and to that end has all the power of the official from whom the appeal is taken.

(2) To vary or modify the application of this Chapter, relating to the use, construction or alteration of buildings or structures, or the use of land, so that the spirit of this Chapter is observed, public safety and welfare secured and substantial justice done, when the strict application of this Chapter will deprive a property of the privileges enjoyed by other property of the same zoning classification in the same zoning district because of special circumstances applicable to a property, including its size, shape, topography, location or surrounding.

(3) The Board shall not have the power to change this Chapter or to change the Zoning District Map of the City.

(4) The majority vote of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of any City administrative official, or to decide in favor of the applicant any matter upon which it is required to pass, or to grant any application for a variance.

(c) Meetings. Meetings may be called by the chairperson by giving written notice forty-eight (48) hours prior to the commencement of the meeting to all Board members, the Mayor, the Chief Building Official, the applicant or appellant and all persons filing a written protest or statement of opposition prior to the issuance of notice. All meetings shall be posted and open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, such fact shall be indicated. The Board shall keep records of its findings and official actions, which shall be filed as soon as practicable in the City Hall and which shall be open to public inspection. The concurring vote of three (3) members of the Board shall be necessary for a motion of the Board to be approved or denied. (Ord. 94-11 §1; Ord. 98-33 §17; Ord. 98-60 §1; Ord. 2002-38 §1)

Sec. 16-327. Reserved.

Sec. 16-328. Black Hawk Historic Home Program.

(a) Purpose. The Black Hawk Historic Home Program is established in order to preserve the historic character and structure of the homes in the City.

(b) The City Council shall have the authority to jointly manage and implement the program consistent with the goals of the program as provided in this Section and the guidelines of the program as adopted and amended from time to time by resolution of the City Council. (Ord. 2004-8 §2)

Secs. 16-329—16-340. Reserved.
ARTICLE XVI

Enforcement

Sec. 16-341. Enforcement generally.

The enforcement of the provisions of this Chapter in the first instance shall be the duty of the Planning Director. The Chief Building Official may also directly enforce this Chapter under the direction of the Planning Director. It shall be the duty of other City officials to notify the Planning Director of any violations of this Chapter. (Ord. 94-11 §1)

Sec. 16-342. Violations.

It is unlawful to erect, construct, reconstruct or alter, maintain or use any building or structure or use any land in violation of any of the provisions of this Chapter or any amendment thereto. Any person, either as owner, lessee, occupant or otherwise, who violates any of the provisions of this Chapter or any amendment thereto, or who interferes in any manner with any person in the performance of a right or duty imposed upon him or her by the provisions of this Chapter shall be guilty of a violation of this Chapter. (Ord. 94-11 §1)

Sec. 16-343. Persons liable.

The owner, tenant or occupant of any building, land or part thereof and any architect, builder, contractor, agent or other person who participates in, assists, directs, creates or maintains any situation that is contrary to the requirements of this Chapter may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided. The owner or any person in possession of any property used in violation of this Chapter shall also be held responsible for any violation thereof, whether or not the owner or person in possession or any agent thereof committed the violation or has neglected to prevent the violation by another person. (Ord. 94-11 §1)

Sec. 16-344. Remedies.

In case any building or structure is erected, constructed or reconstructed, altered or repaired, converted or maintained, or in case any building, structure or land is used in violation of this Chapter or other regulation made under authority conferred hereby, the City, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration or repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of such building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises. (Ord. 94-11 §1)

Sec. 16-345. Penalties.

Failure to comply with the terms of this Chapter shall constitute a civil infraction except as otherwise provided herein. Any person who is found guilty of or pleads guilty or nolo contendere to the commission of the civil infraction shall be subject to a civil penalty as set forth in this Code. For each day or portion thereof during which any violation continues, a person may be sited for a separate infraction. The penalties specified in this Chapter shall be cumulative and nothing shall be construed as either prohibiting or limiting the City from pursuing such other remedies or penalties in an action at law or equity. (Ord. 94-11 §1)

Sec. 16-346. Permit revocation.

A zoning, sign, special use, building, conditional use or other permit or any certificate of occupancy or certificate of appropriateness
issued under the provisions and procedures of this Chapter may be revoked by an authorized representative of the City if the permit recipient fails to develop, improve or maintain the property in accordance with the approved plans, the requirements of this Chapter or any additional requirements lawfully imposed by the City.

(Ord. 94-11 §1)

Secs. 16-347—16-360. Reserved.

ARTICLE XVII

Application Procedures and Submittal Requirements

Sec. 16-361. Procedures and submittal requirements.

This Chapter establishes and explains the processes, procedures, fees and submittal requirements for site plans, special review use permits, historic and architectural review, planned unit development, rezoning and amendments to the Zoning Ordinance, variances, nonconforming uses, structures and lots, notice of public hearings and appeals, and site development standards and procedures for establishing vested rights. All applications submitted under this Chapter shall be signed by the applicant and shall certify that the applicant has reviewed this Chapter and the application complies with the requirements of this Chapter.

(Ord. 94-11 §1; Ord. 98-5 §1; Ord. 98-60 §2)

Sec. 16-362. Site development standards and procedures for establishing vested property rights.

(a) These site development standards are intended to enhance and protect the area's natural, as well as man-made environments. This Section also defines a site specific development plan to implement Article 68 of Title 24, C.R.S. No vested property rights shall be created in the City except by compliance with this Section and Section 16-139(c) of this Code.

(b) General requirements.

(1) Site development regulations shall apply to all areas within the City that are in accordance with at least one (1) of the following:

a. All uses located within the following zone districts:

CG - Core Gaming
MG - Millsite Gaming
TG - Transitional Gaming
HD - Hillside Development-Mixed Use
LM - Low Intensity-Mixed Use
C/BS - Commercial/Business Services
LI - Limited Industrial
HAO - Historic and Architectural Review Overlay District
FPO - Floodplain Overlay District

b. All uses allowed in the PUD Planned Unit Development zone district with the exception of those uses relating to a single-family detached type of development with less than four (4) residential units. The Board of Aldermen may find that certain single-family detached development sites with less than four (4) units may be required to submit a site development plan for review based upon, but not limited to, unique topological features, proximity to environmentally sensitive areas or proximity to open space or park lands.

c. Uses which are located or to be located within any other zone district which are specifically made subject to this Chapter by the Board of Aldermen.

d. Uses which are located or to be located on property within any other zone district, and the owner or developer of the property requests an application of these site development plan requirements, subject to this Chapter.

(Ord. 94-11 §1; Ord. 98-5 §1; Ord. 98-60 §2)
(2) No building permit for any use described in Subsections (b)(1)a., b. and c. shall be issued for the construction of any new building, structure or improvement to the site, any alteration or reconstruction of or addition to any improvement, without first obtaining the approval of a site development plan for the proposed use. No application for a site plan shall be accepted until all of the real property that is the subject of the application has been platted as one (1) lot.

(3) No excavation permit for any use described in Subsections (b)(1)a, b and c shall be issued for any grading or earth movement of any type, unless exempted from Chapter 18, Article XII of this Code without first obtaining the approval of a site development plan for the proposed use.

(4) Unless specifically authorized by the Board of Aldermen, no overlot grading, drainage work, parking lot construction or other site improvements will be allowed without first obtaining approval of a site development plan for the proposed use.

(5) The site development standards outlined by this Chapter apply throughout the zone districts and uses outlined in Subsection (b)(1). These standards are in addition to any other development or design standard which may otherwise be applicable to a particular property or specific area within the City. In the case of any perceived conflict among applicable development standards, the more restrictive standard will apply.

(6) No site development plan will be approved unless all components of the proposed development comply with the Black Hawk Zoning and Subdivision Ordinances and all other applicable ordinances.

(7) Consideration of a site development plan application by the City may occur concurrently with any other land use approvals by the City.

(8) No vested rights shall be created except by a site specific development plan approved by the Board of Aldermen. If the applicant wishes the approval of the site development plan to create vested property rights pursuant to Article 68 of Title 24, C.R.S., the plan shall include a statement that it is being submitted for designation as a site specific development plan. Failure to include such statement or to comply with any other condition of this Chapter regarding site specific development plans shall result in no vested property rights being created by the approval of the site development plan. Notwithstanding anything herein to the contrary, vested property rights may be created by a development agreement between the City and the applicant or landowner.

(c) Application and site development plan submittal requirements.

(1) Each request for site development plan approval shall be accompanied by one (1) copy of the complete application form, fifteen (15) copies of the proposed site development plan with related information, three (3) copies of the architectural renderings of any buildings or structures and an application fee (applicant's package). Such plans shall be prepared by a qualified professional architect, landscape architect or engineer. The fee will be the same as provided in Section 16-370 of this Chapter. If the plan is to serve as the site specific development plan for creation of a vested right, the plan shall be so marked and the fee for such designation shall be submitted with the applicant's package.

(2) The applicant's package will be submitted to the Planning Director. The applicant shall sign a transmittal letter describing the contents of the package.

(3) The proposed site development plan shall be prepared by a qualified professional (architect, landscape architect or engineer)
and drawn on one (1) or more sheets of paper measuring twenty-four (24) by thirty-six (36) inches with a minimum scale of one (1) inch equals fifty (50) feet unless a different scale or size of paper is approved by the Planning Director. Each site development plan will be signed by the applicant.

(4) The site development plan described in Subsection (b)(1) shall contain the following information:

a. Date of preparation.

b. North arrow with written and graphic scale.

c. Vicinity map showing the relationship of the site to the surrounding area within a one-half-mile radius.

d. Listings of the gross acreage, lot acreage and net acreage of each proposed use, as well as the number of dwelling units (when applicable) and the number of buildings and gross floor area (when applicable).

e. Listings of the number of all parking stalls, as well as indicating number of compact car and handicap parking spaces.

f. The existing grading and drainage information on the site drawn at five-foot intervals and related to United States Geological Survey (USGS) datum, as well as finished grades and contours proposed by the applicant.

g. The size and location of all existing and proposed public and private utility and emergency easements or other rights-of-way.

h. The building envelope, size, setback dimensions and height of all proposed structures and all existing structures which are to be retained on the site.

i. Location, dimensions and names of adjacent streets and proposed internal streets showing center line radii and curb return radii. Location and dimensions of bike/pedestrian paths and walkways shall be shown.

j. The proposed layout of the parking lot, including location and dimensions of parking spaces, curb islands, internal planter strips, maneuvering aisles, location and dimension of on-site vendor delivery areas and access driveways with indication of direction of travel.

k. Location of all exterior lighting, signage and fencing used to divide properties and to screen mechanical equipment and trash receptacles.

l. The existence of any specific historic and physical features on the site, including drainage ways, lakes, buildings and structures. The site development plan must indicate which physical features will be retained. The location of adjacent properties and their physical features within fifty (50) feet of the property line shall be identified, including setback dimensions of adjacent structures.

m. The location of all existing trees greater than three-inch caliper and the trees that will be retained, the location and dimensions of landscaped areas, location and names of all proposed plant material and ground cover and the location of other pertinent landscape features.

n. Location of all existing and proposed recreational amenities such as open play areas, swimming pools, tennis courts, tot lots and similar facilities.

o. A survey that is certified by a surveyor who is registered in the State.
p. Traffic impact study as specified by the Public Works Department.

q. Environment report as specified by the Public Works Department.

r. Soils report as specified by the Public Works Department.

(5) The applicant's package shall also include the following which may be designated on the site development plan or accompanying documents:

a. A metes and bounds description of the property verified and signed by a registered land surveyor in the State. If the site is on a portion of land that has an existing recorded plan, a legal description referencing lot, block and subdivision name will be sufficient.

b. Proof of ownership of the property.

c. A narrative statement describing the general proposal, applicant's name, present zoning and the intended use of the property. Also included in this narrative should be the general development schedule and phasing plan when the project is not constructed at one (1) time. When applicable a statement of maintenance responsibility shall be included in the narrative for all improvements shown on the site development plan.

d. A narrative description of all structures on the property of historical, architectural or geographic significance, the intended use of such structures and how such structures are to be incorporated into new construction.

e. A description of all other approvals for the development of the property applied for or necessary from the City or any other applicable entity including, but not limited to, conditional use permits, special use permits, geotechnical or environmental investigation and the date such approvals were or are to be requested.

f. When applicable, a copy of the executed covenants.

g. When applicable, a copy of the approved PUD ordinance and PUD plan and exhibits for the property under review.

h. Additionally, the applicant shall provide any reasonable information not covered in Subsections (b)(4) and (b)(5) to aid in the review of the site development plan including, but not limited to, traffic studies and soil information.

(6) The architectural renderings of the proposed building or structures, drawn on twenty-four-by-thirty-six-inch paper, shall be submitted to the Planning Director. These renderings shall include:

a. Front, rear and side elevations accurately depicting the finished building or structure on the site. Perspective renderings showing the building in one (1) or more oblique angles, scale models, photographs of similar structures or other similar techniques may be submitted if authorized by the Planning Director;

b. All exterior surfacing materials and colors;

c. Outdoor lighting, furnishings and architectural accents;

d. Any proposed signage for the site and its placement in relationship to the building or structure.
(d) Landscaping requirements.

(1) Each request for a site development plan approval shall be accompanied by a landscape plan. The owner or the owner’s successor and assign shall maintain the landscape plan as originally approved. A financial guarantee in the form of cash or letter of credit to cover replacement of plant materials that die within one (1) year from the issuance of a certificate of occupancy (C.O.) shall be required prior to issuance of a C.O.

(2) The owner of the property shall be responsible for maintaining all landscaping installed in accordance with the landscape plan. In the event the owner does not maintain such landscaping, after thirty (30) days' written notice to the owner, the City may replace dead plant materials and otherwise maintain the landscaping and all costs and expenses related thereto shall be made a lien on the property.

(e) Review procedures and requirements for approval.

(1) Upon receipt of the applicant's package, the Planning Director will review the package and indicate any deficiency found in the application. Once the application is found to be complete, the review procedure shall begin. The Planning Director shall notify the applicant if the package is complete or if additional documentation is required.

(2) The Planning Director will have sixty (60) days after the application is found to be complete to review the proposal and make comment on the technical merits of the package. This review includes compliance with all ordinances, including setbacks, building heights, parking and landscape requirements. The Planning Director may contact the applicant, if necessary, during the review period to discuss any modification that may be required. Minor modifications (up to twenty-five percent [25%] of the gross site area) are allowed throughout the entire review process. Major modifications as recommended by the Planning Director may be required to resubmit a new application with the proposed changes.

(3) After the initial sixty-day review, the Planning Director shall have five (5) working days to prepare a recommendation. This report shall be in the form of a recommendation to the Board of Aldermen, a copy of which shall be made available to the applicant (the "report").

(4) The Planning Director’s recommendation shall become a final decision for any application that is not a site specific development plan and is limited to at-grade parking sites, residential development sites or development sites located outside of the gaming district and not related to a gaming development, fifteen (15) days after the applicant receives the report or the next regular Board of Aldermen meeting, whichever occurs last, and the applicant has not filed a written request for review by the Board of Aldermen, or the Board of Aldermen has not requested that the Planning Director schedule a public hearing on the application.

(5) Except as provided in Section 16-362(e)(4), the process for the application before the Board of Aldermen is the same process as specified for a preliminary plat under Section 17-63(c)(5). The Board of Aldermen may deny the application, approve the application with or without conditions or continue the application for additional information.
(6) If approved, the effective date of the approval shall be the effective date of the resolution approving the site specific development plan. The resolution of the Board of Aldermen approving the site specific development plan shall be accompanied by any terms or conditions imposed on the site specific development plan. If and when the application is approved or conditions for approval have been met, a building permit or an excavation permit may be issued upon the request of the applicant. However, an applicant for an excavation permit must also comply with the requirements to obtain an excavation permit as set forth in Chapter 18, Article XII of this Code. Approval of a site development plan shall be valid for one (1) year after the date of the approval or approval with conditions by the Board of Aldermen, or three (3) years if requested in writing by the applicant, unless otherwise specified in the site development plan or site specific development plan. If the applicant has not obtained permits and commenced development of the property within said time, the approval of the site development plan or site specific development plan shall be rescinded upon written notice to the applicant.

(7) Each site specific development plan, upon approval by the City, shall contain a statement as follows: "This plan constitutes a site specific development plan as defined in §24-68-101, et seq., C.R.S., and Ordinance No. ______ of the City of Black Hawk." [and, if applicable] "The terms and conditions of such approval are contained in Resolution No. ____ adopted by the City on ______ and available at City Hall, 201 Selak Street, Black Hawk, Colorado." In addition, a notice describing the type and intensity of use proposed, the specific parcel or parcels of property affected, the terms and conditions of any approval and stating that a vested property right pursuant to Article 68 of Title 24, C.R.S., has been created shall be published once, not more than fourteen (14) days after approval of the site specific development plan, in a newspaper of general circulation within the City by the landowner. Failure to publish said notice constitutes a forfeiture of the vested rights.

(f) Vested property rights procedures and requirements.

(1) No vested property rights may be created or site specific development plan approved except in compliance with the requirements of this Chapter.

(2) A property right which is vested as provided herein shall be vested for a period of three (3) years from the date of approval of the site specific development plan upon compliance with all terms and conditions of such approval. This vesting period shall not be extended by any amendments to the site specific development plan, unless expressly authorized in writing by the City.

(3) Approval of a site specific development plan shall not constitute an exemption from or waiver of any other provisions or requirements of the City pertaining to the development and use of the property adopted or applicable before or after the approval of a site specific development plan.

(4) Nothing in this Chapter is intended to create a vested property right, but only to implement the provisions of Section 24-68-101, et seq., C.R.S. In the event of a repeal of said statute or a judicial determination invalidating or declaring unconstitutional part or all of said statute, portions of this Chapter regarding approval of site specific development plans or creation of vested property rights shall be deemed repealed and the provisions hereof no longer effective, or
in the event only a portion of said statute is declared void or unconstitutional, then the portion of this Chapter corresponding thereto shall be deemed repealed and no longer effective.

(5) Nothing herein shall be construed to limit the authority of the City and a landowner to enter into a development agreement vesting property rights in the landowner. Such agreement shall be construed in accordance with the terms and conditions of said agreement and not limited or expanded by the provisions of this Chapter.

(6) Waiver or forfeiture of vested rights.

   a. Failure to abide by any terms or conditions imposed by the City on the approval of any site specific development plan shall constitute a forfeiture by the landowner of any vested right created by the plan unless otherwise specifically agreed by the City in writing.

   b. Any petition for annexation to the City shall describe all vested property rights approved by any local government in effect at the time of the petition, if any, and be accompanied by all site specific development plans approved by any local government. Failure to so identify any previously approved vested property right and provide all approved site specific development plans shall constitute a waiver of the vested right created by any other local government upon annexation to the City unless specifically provided otherwise in the ordinance of annexation adopted by the City.

   c. The landowner shall be required to include with any plan submitted for approval as a site specific development plan notice of any natural or man-made hazards on or in the immediate vicinity of the subject property which are known to the landowner or could reasonably be discovered at the time of submission of the plan. In the event that a natural or man-made hazard on or in the immediate vicinity of the subject property is discovered subsequent to the approval of a site specific development plan, which hazard would impose a serious threat to the public health, safety and welfare and which hazard was not described in the plan submitted for approval as a site specific development plan and which hazard is not corrected by the landowner, the vested property right created by such site specific development plan shall be forfeited by the landowner.

   d. A site specific development plan submitted by a landowner and approved by the City as provided herein forfeits any creation of, the landowner forfeits any creation of, and the landowner waives his or her right to claim, a vested right by a site specific development plan previously approved by the City or any other local government for the property.

   e. Failure of the landowner to publish the notice required herein constitutes a waiver by the landowner of the vested right created by the approval of the site specific development plan.

   g) The Planning Director may approve minor modifications of an approved site plan. A minor modification includes cumulative modifications of up to five percent (5%) of the entire gross site area of an approved site plan. Major modifications as determined by the Planning Director are subject to review by the City Council in the same manner as a new site plan in accordance with this Section. (Ord. 94-11 §1; Ord. 98-5 §§2, 3; Ord. 98-33 §20; Ord. 98-37 §1; Ord. 98-60 §§3, 4; Ord. 98-62 §1; Ord. 99-10 §1; Ord. 2001-15 §§10, 11, 14-16)
Sec. 16-363. Special review use permits.

(a) Uses which require a special review use permit are those which may be allowed in the zoning district in which they are listed if it can be demonstrated that the use, in the proposed location, is compatible with the district characteristics, purposes, dimensional regulations and supplementary regulations for the zoning district in which the use is proposed of the zoning purposes of the district, the particular site and the surrounding area. Uses stipulated in this Chapter as requiring a special review use permit shall only be allowed with prior issuance of such permit by the Board of Aldermen as described below.

(b) Who may apply. Both the owner of the property on which the proposed use will be conducted and the operator of the use for which a special review use permit is required, or their authorized representative, shall be party to the application for a special review use permit.

(c) Process. The process for obtaining a special review use permit is set forth in Subsection 16-365(e) below and shall be followed in the application for and processing of all requests for a special use permit when required by any zoning district in which a proposed use will be located or other regulation of this Chapter.

(d) Transferable. Special review use permits allow a particular use for which it is granted to operate on the specific property listed in the permit in accordance with approved plans. A special use permit may be transferred to any other person to operate the same use per the same terms of the permit, upon notification to the Planning Director, but may not be transferred to any other property or building.

(e) Duration. A special review use permit shall remain in full force and effect as long as the use for which the permit is granted continues or for the term specified on the permit.

(f) Suspension of permit. The Planning Director may suspend a special review use permit upon finding that the use, building or site for which the permit was issued violates any conditions of approval applied at the time the permit was issued, or the use established is substantially different than that which was represented in the application. Notice of suspension shall be brought before the Board of Aldermen at its next regularly scheduled meeting.

(g) Specific regulations for fixed guideway transportation systems. These supplemental regulations are to ensure and provide for a viable and attractive alternative mode of transportation for the general public. They are intended to encourage planned and orderly development of the overall transportation system within the City, lessen traffic congestion within the historic center of the City, enhance the pedestrian environment along Main Street and Gregory Street and develop better utilization of remote parking facilities.
(1) Fixed Guideway Transportation (FGT) systems shall be developed in accordance with the transportation element contained within the Comprehensive Plan.

(2) FGT systems shall be located in a manner so as not to significantly impact any adjacent developed property with noise, vibration or degraded air quality.

(3) FGT systems and related accessory uses such as terminals and stations shall be located and designed for maximum public accessibility. Access to these proposed improvements shall be provided for by public easements or rights-of-way and shall be designed to meet the requirements outlined by the Americans with Disabilities Act of 1990.

(4) A traffic impact assessment shall be required for all FGT submittals under this Section. This assessment shall consider the following:

   a. The impact on vehicle traffic patterns within the City.
   b. The impact on pedestrian volume and patterns in those areas adjacent to terminals and stations.
   c. The impact on the public shuttle operations within the City.
   d. The intended service area or area of benefit in a two-hundred-fifty-foot radius around the proposed terminal or station.
   e. The intended capacity and utilization of such a system in terms of persons served per hour.
   f. Terminal and station area capacities.
   g. Seasonal hours of operation.
   h. Proposed methods for accommodating peak capacities, as well as those times when pedestrian traffic volumes exceed the defined capacity of the system.
   i. Any additional information considered relevant by the Planning Director in order to review the site specific impacts of a proposed FGT.

(5) FGT corridors shall be designed and engineered in a manner to minimize hillside excavation and the removal of mature vegetation.

(6) Terminals and stations shall be subject to the certificate of appropriateness procedure required by the HPC.

(7) These supplemental requirements to the special review use permit are intended to augment the existing rules and procedures required by the Colorado Passenger Tramway Safety Board as provided by Title 25, Article 5, Part 7, C.R.S.

(h) Specific regulations for residential uses located in Commercial Business Services (C/BS) and the entertainment gaming districts Core, Millsite and Transitional Gaming. These supplemental regulations are to ensure and provide for compatible integration of commercial and residential uses in these commercial districts. These regulations are intended to further establish adequate assurances for both uses, while providing that a residential use will not compromise the underlying permitted uses of the commercial zoning districts. The applicant shall provide information that demonstrates compliance with the following criteria:

   (1) Off-street parking must be provided on site for all residential uses, and designated as residential parking.
(2) Parking area calculations. If a residential use increases the total required parking to the property in which the residential use is located, additional parking or parking impact fees must be paid in advance of the issuance of a special review use permit or any building related permits.

(3) The applicant must show that the proposed residential use complies with the Uniform Building Code, the Uniform Fire Code and the National Fire Protection Association requirements for residential uses, including but not limited to emergency exiting plan and residential fire detection requirements.

(4) Every residential use shall have at minimum a residential bathroom and kitchen, exclusive to that residential unit, that are not common or shared facilities with the principal permitted use.

(5) The approval of a residential special review use to a building as provided herein shall not cause the principal permitted use to be restricted by hours of operation or by the nature of the permitted uses.

(6) Residential use cannot exceed more than fifty percent (50%) of the total floor area of the principal building.

(7) Residential use may occupy an accessory building; however the accessory building may not exceed twenty-five percent (25%) of the total square footage of the principal building and shall be required to maintain separately metered utility services, including but not limited to water and sewer.

(8) The occupants of the residential use shall not exceed the provision of family as defined in Section 16-24.

(9) The residential use cannot occupy the first floor elevation of a principal building.

(10) The residential use shall be considered a permanent use and shall be considered a separate and distinct use from an interim use, commercial accommodations and guest unit, as defined by this Code. As such, a residential use secondary to a principal use shall not include hotels, motels, lodging houses, boarding houses, dormitories and bed and breakfasts. (Ord. 94-11 §1, 1994; Ord. 2002-42 §4; Ord. 2009-23)

Sec. 16-364. Planned unit development process.

(a) General provisions.

(1) The approval of a planned unit development or PUD, constitutes an overlay zone to an existing zoning district to a more flexible PUD zone overlay district. The underlying zone district does not change.

(2) Each PUD application shall be reviewed and approved, disapproved or conditionally approved by the Board of Aldermen.

(b) Review and processing procedures. PUDs shall be processed as a zoning district amendment in accordance with Section 16-366.

(c) Occupancy or use restrictions prior to approval. Notwithstanding the rezoning of an overall area as a PUD, no portion thereof shall be used or occupied otherwise than as was permitted immediately prior to the approval of such rezoning until:

(1) A final subdivision plat for said portion shall have been approved by the Board of Aldermen as required by Chapter 17 of this Code.

(2) The proposed use has received a certificate of appropriateness from the HPC under Section 16-327. (Ord. 94-11 §1; Ord. 98-33 §21; Ord. 2009-23)
Sec. 16-365. Rezoning procedures, amendments to zoning ordinance and special review use permits.

(a) The City may from time to time amend the number, shape or boundaries of any zoning district, the uses permitted within a zoning district, any regulation or within a zoning district or any other provision of this Chapter.

(b) All territory annexed to the City shall be zoned in accordance with the zoning classifications established by this Chapter and in accordance with the procedures in this Section for rezoning. All annexed land shall be zoned at the time of annexation as required by this Chapter.

(c) Planned unit developments as described under Section 16-137 shall be processed as amendments to the Zoning District Map and to the applicable district regulations within said area proposed for development. The zoning districts in a PUD and the subdivision plat of the planned development shall, upon approval by the Board of Aldermen, be incorporated in the Zoning District Map.

(d) Who may apply.

(1) A request for an amendment to this Chapter, Zoning Map or special review use permit may be presented to the Board of Aldermen by persons owning real property within the City or residents of the City;

(2) Owners or residents requesting the addition of a land use into a zoning district in which it is not enumerated in this Chapter or persons appealing a determination of the Planning Director regarding the classification of a use, or pursuing a classification for which the determination of the Planning Director has been appealed, may apply to the Board of Aldermen for consideration of the proposed amendments to the zoning district; or

(3) An amendment to this Chapter or a rezoning may be initiated by the Board of Aldermen. Any owner or resident may suggest to the Board of Aldermen that an amendment be given consideration.

(e) Procedure for special review use permits and amending the Zoning Ordinance or the Zoning Map. Amendments to this Chapter or to the Zoning Map or the procurement of a special review use permit shall be processed in the following manner:

(1) Submittal of application. The applicant must submit to the Planning Department the materials necessary for the application to be heard by the Board of Aldermen. The Planning Department shall have ten (10) days to review the submittal for completeness.

(2) The Planning Department will send the application out for referrals to various agencies for comment. These agencies will have twenty-five (25) days to respond.

(3) A hearing is scheduled before the Board of Aldermen as provided in Section 16-369.

(4) Board of Aldermen hearing. The Board of Aldermen conducts a public hearing to consider the application. Notice of the hearing shall be given as provided in Section 16-369. The Board of Alderman, at the public hearing and after review and discussion of the proposal, shall take one (1) of the following actions:

a. Approval of the application, without conditions.

b. Conditional approval of the application, indicating for the record what condition shall be attached to the proposal.

c. Disapproval of the application, indicating for the record the reason for the recommendation of denial.
(5) Basis for approval. The Board of Aldermen shall give consideration to and satisfy themselves of the criteria set forth below on land use applications identified in Section 16-361 except subdivisions:

a. That a need exists for the proposal;

b. That the proposal is in conformance with the goals and objectives of the Comprehensive Plan;

c. That there has been an error in the original zoning; or

d. That there have been significant changes in the area to warrant a zone change;

e. That adequate circulation exists in the area of the proposal and traffic movement would not be significantly impeded by the development resulting from the proposal; and

f. That any additional cost for municipal-related services resulting from the proposal will not be incurred by the City.

The criteria set forth in c and d above shall not apply to an application for a special use review permit.

(2) The owners of twenty percent (20%) or more of the area of those lots located within one hundred (100) feet of the boundary of the area in the proposed amendment, excluding any distance for public rights-of-way. (Ord. 94-11 §1; Ord. 98-33 §§22—26; Ord. 98-60 §5)

Sec. 16-366. Variances and appeals.

All appeals of decisions and requests for a variance shall be processed as described below.

(1) Appeals of decisions.

a. Who may apply. Appeals to the Board of Appeals may be made by any person aggrieved by the inability to obtain a building permit (except where inability to obtain a building permit is due to denial of rezoning application by the Board of Aldermen or by decision of any administrative officer in the City based upon or made in the course of the administration or enforcement of this regulation. Appeals to the Board of Appeals may be made by any officer, department, board or bureau of the City affected by the grant or refusal of the building permit or by other decision of the administrative officer or agency, based on or made in the course of administration or enforcement of this regulation.

b. Time limit. Appeals to the Board of Appeals must be made in writing and filed with the City Clerk within ten (10) days of the action or decision appealed.

c. Stay of proceedings. An appeal stays all proceedings and furtherance of the action appealed from unless the officer from whom the appeal is taken certified to the Board of Appeals, after the notice of appeal shall have been filed with him or her, that by reason of facts stated
in the certificate, a stay would, in his or her opinion, cause imminent peril of life and property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or a court of record on application and on notice to the officer from whom the appeal is taken and on due cause shown.

(2) Variances. Requests for relief from the regulations and development standards of this Chapter may be taken to the Board of Appeals when the strict application of this Chapter will deprive a property of the privileges enjoyed by other property of the same zoning classification in the same zoning district because of special circumstances applicable to a property, including its size, shape, topography, location or surrounding.

(3) Hearing. Hearings of the Board of Appeals shall commence no later than the next regularly scheduled meeting following the completion of required notice procedure. The Board of Appeals may continue a hearing as may be necessary to obtain necessary information and make its decision. Public hearings shall be conducted in the manner provided in this Code.

(4) Decision of the Board of Appeals.

a. After a public hearing, the Board of Appeals may modify the application of the regulations or provisions of this Chapter relating to the construction or alteration of buildings or structures or uses of land if the Board of Appeals finds that all of the following exist:

1. Due to exceptional and extraordinary circumstances unique to the property or structure for which the variance is sought, the strict enforcement of the provisions of this Chapter would cause an unnecessary hardship to the applicant;

2. The circumstances causing the unnecessary hardship were not created by an owner or user of the property or by the applicant for the variance;

3. The hardship is not established on the basis of lack of knowledge of the restrictions upon constructing or altering a structure; nor by the purchasing of a property without knowledge of applicable restrictions; nor by showing that greater profit would result if the variance were granted;

4. The circumstances causing the unnecessary hardship are particular to the land or structure for which the variance is sought and do not apply generally to land and buildings in the zoning district in which the property is located;

5. The variance requested is the minimum deviation from this Chapter necessary to allow the same and no greater use as that allowed of other land or structures in the same zoning district;

6. The granting of the variance will not injure the appropriate use of adjacent conforming properties, will not impair an adequate supply of light and air, will not impair the view from adjacent property and will not substantially diminish or impair property values within the surrounding area;

7. The granting of the variance will be consistent with the spirit, purpose and intent of this Chapter and will not create a situation which
alters the character of the area surrounding the property for which the variance is granted;

8. The granting of the variance will secure and in no way diminish the public safety and welfare; nor impair prevention of or increase risk of fire, flood, traffic congestion or other hazard;

9. The granting of the variance is necessary to cause substantial justice to be done; and

10. The granting of the variance will not allow uses or densities not permitted in the zoning district in which it is granted nor allow the expansion or establishment of a nonconforming use.

b. In granting a variance, the Board of Appeals may prescribe any safeguard that it deems necessary to secure substantially the objectives of the regulations or provisions to which the variance applies and may impose such conditions on the use of the property for which the variance is sought as are consistent with the purposes of this Chapter. If such safeguards or conditions are imposed, the variance shall not become effective until the owner of the property and the applicant agree to abide by such conditions.

(5) Not transferable. Each variance shall apply specifically to the property or structure described in the approval and shall not be transferable to any other property or structure.

(6) Duration. Unless limited by its terms, a variance shall remain in full force and effect as long as the use for which the variance is sought continues. However:

a. Failure to apply for a building permit to carry out the work or failure to begin the use involved in the variance, within one (1) year from the date the variance was granted, shall constitute abandonment of the variance.

b. Discontinuance of the use for which the variance was granted for a period of one (1) year or more shall constitute abandonment of the variance.

c. Upon abandonment, the variance shall automatically cease to exist with no further action by the Board of Appeals. (Ord. 94-11 §1, 1994; Ord. 96-9 §1; Ord. 2009-13 §1)

Sec. 16-367. Nonconforming uses, structures, lots and parking.

(a) Purpose. The purpose of these provisions shall govern the use and improvement of a nonconforming lot and the modification, expansion, reconstruction, alteration, abandonment and continued occupancy of a nonconforming structure.

(b) Nonconforming uses.

(1) Any use of a building, sign or land lawfully existing at the time of the enactment of this Chapter which does not conform to the regulations of the zoning district in which it is located or with the applicable development standards of this Chapter is a nonconforming use.

(2) The continuance, modification, expansion, improvement or abandonment of all nonconforming uses shall strictly comply with the regulations set forth below in this Section, in addition to all other applicable regulations of this Chapter and the City's building code.
(3) The continuation of existing legal nonconforming uses shall be subject to the following conditions:

a. If a legal nonconforming use exists as of the effective date of the ordinance codified herein, such use may be continued in accordance with the provisions of this Section.

b. Mobile homes not meeting the definition of "manufactured home" may continue to be used as a residential dwelling after the effective date of the ordinance codified herein, unless abandoned as a dwelling for a period of six (6) months or more.

(4) The expansion of a use not permitted in the zoning district in which it is located shall be subject to the following conditions:

a. Any expansion of a nonconforming use in a conforming structure requires a conditional use permit from the Planning Director and shall meet the following criteria:

1. All expansion of the nonconforming use in a conforming structure shall be confined to and conducted wholly within the structure or portion thereof which is in existence as of the effective date of the ordinance codified herein.

2. The total cumulative area of all expansions of the nonconforming use occurring after the effective date of the ordinance codified herein shall not increase the gross floor area of the nonconforming use by more than twenty percent (20%) above that in existence prior to the effective date of the ordinance codified herein, except for existing residential structures expanded within conforming setbacks not resulting in more units than permitted by the zoning district in which such residential use is located.

3. All new site improvements necessitated by an expansion shall comply with the development standards of the zoning district in which the use is located or governing the use, whichever is more restrictive.

4. The total number of parking spaces required by this Chapter for the area of any expansion must be provided in accordance with the parking standards set forth in this Code.

b. Expansion of a nonconforming use in a nonconforming structure shall not be permitted.

(5) Change of a use not permitted in a zoning district in which it is located to any use permitted in the applicable zoning district is allowed in accordance with the following conditions:

a. The change shall not create any additional nonconforming situations nor increase the extent of nonconformance.

b. Any new improvements, other than maintenance of existing facilities, necessitated by the change in use shall conform with all applicable regulations of the zoning district in which it is located. Existing site improvements which do not conform to the applicable regulations of the zoning district are not required to be brought into compliance except as required in Subparagraph d below or in other applicable parts of this Section.

c. Any expansion involved with the change in use shall comply with the applicable regulations of this Section.
d. New uses which require a special use permit shall be allowed only if all proposed and existing improvements, other than existing nonconforming structures, will comply with all applicable regulations and development standards of the zoning district in which the use is located as specified in this Chapter.

(6) Any use which is not allowed in the zoning district in which it is located and which is discontinued for a period of six (6) months or more shall be deemed abandoned and such nonconforming use shall not be renewed.

(c) Nonconforming structures.

(1) All nonconforming structures shall comply with the provisions of the International Building Code and with all other provisions of this Code not inconsistent here-with.

(2) The continued use of any structure shall be subject to the following conditions:

   a. Continued use of a nonconforming structure is allowed if the structure is nonconforming as of the effective date of this Code.

   b. If use of a nonconforming structure is ancillary to the primary use on the site, changing the use in the nonconforming structure to any primary use allowed in the zoning district would be considered an increase in intensity of the nonconformance and would not be permitted unless a variance was granted for the nonconforming structure.

   c. If the site's height is nonconforming, expansion is allowed if the expansion does not create any other nonconforming condition and if the newly constructed portion does not exceed applicable height limitations.

   d. If the required number of off-street parking spaces is provided for the proposed expansion in accordance with this Chapter and Section 16-263.

(d) Alteration, repairs or replacement.

(1) All interior remodeling or any alteration wholly within a nonconforming structure is allowed if the external configuration of the structure is not changed, provided that such alteration does not create any nonconforming use or situations nor increase the intensity of the nonconformance per Sec-
tion 16-366(b) within this Section and all other applicable regulations of this Section and the Chapter are met.

(2) Ordinary repairs and maintenance of a nonconforming structure shall be allowed and are encouraged.

(3) Any nonconforming structure extensively damaged by sudden destruction beyond the control of the user or by fire may be reconstructed or replaced if such destruction does not exceed seventy percent (70%) of the total structure (as determined by the Chief Building Official). Such reconstruction shall occur on the same lot and with the same external configuration, only if all other provisions of this Chapter and of this Code are met and appropriate variances are granted regarding the external configuration of the structure. Prior to the granting of said variance, it shall be demonstrated that reconstructing the structure in accordance with the provisions of this Chapter would deprive the owner use of the property in a manner which is equitable to other uses in the same zoning district.

(4) Alterations or remodeling of a nonconforming structure which changes the use of the nonconforming structure from an ancillary use to a use similar to the primary use shall not be permitted unless a variance is obtained for the structure.

(e) Nonconforming site or lot. Any use in existence at the time of the effective date of the ordinance codified herein on a lot which does not conform with the development standards of the zoning district in which it is located shall be allowed to be continued, provided that the use is not discontinued for a period of six (6) months or more, in which case the use shall be deemed abandoned and such use shall not be renewed except in conformance with all applicable City regulations.

(f) Nonconforming parking. Any parking spaces and/or access to public rights-of-way lawfully existing on the effective date of this Code which do not conform to the parking requirements, development standards and access standards of this Chapter are nonconforming and may continue to be used subject to the following:

(1) Expansion of any conforming or nonconforming use or structure shall not be permitted unless the total number of parking spaces provided for any proposed expansions on the site is provided as stipulated in the parking standards set forth in this Chapter.

(2) Any change or cumulative changes of use in a nonresidential district which increases the total number of required parking spaces by more than twenty percent (20%) above that which is required by the uses existing at the time of adoption of this Chapter shall necessitate the provision of the total number of parking spaces required for all uses. Except that a principal use on a lot in any gaming district shall be permitted five (5) gaming devices without being required to provide parking for those devices, regardless of the percentage of floor area of the structure occupied by those five (5) devices and regardless of the percentage of total parking required by those devices. However, if any number more than five (5) gaming devices are installed on a site in the gaming district, the previous requirement shall apply and parking for all uses on the site, including the five (5) gaming devices previously mentioned, shall be considered in the calculation of required parking.

(3) Nonconforming parking shall not be expanded or enlarged. When additional parking spaces are necessitated by expansion, modification, change in use or by new uses, all new parking areas shall comply with the development standards of this Chapter and
the access to the lot from public rights-of-way, including access to existing parking areas, shall be brought into compliance with this Chapter and other standards adopted by the City.

(4) When any addition to or enlargement of an existing building or use, or a change in use increases the building or the developed area of the use or the parking requirements of the building or structure, the parking requirements of this Chapter must be met. Moreover, if the addition, enlargement or change in use increases the building or the developed area of the use, or the required parking by twenty percent (20%) or more in a nonresidential district or thirty percent (30%) or more in a residential district, then parking for the entire building shall be brought into conformance with all requirements of this Chapter, including required number of spaces, access, landscaping, lighting, screening and other applicable standards. However, the requirement set forth above shall not apply if the owner in a residential district can demonstrate that his or her property is used exclusively for one (1) single-family dwelling unit. Once the owner of a dwelling in a residential district is granted a conditional or special use permit he or she must immediately comply with this Chapter.

(5) Subject to permits and requirements of the State Highway Access Code. (Ord. 94-11 §1, 1994; Ord. 2018-2 §6)

Sec. 16-368. City Council design review and compatibility process.

(a) Purpose and application.

(1) This Section does not apply to any locally designated historic structures which are regulated by the Historic Preservation Commission under Article XIX, Chapter 16, of this Code.

(2) This Section applies to all structures and properties within the City that are not locally designated historic structures.

(3) Any person seeking to modify the exterior of, add to, or construct a new building shall be subject to the following procedures. Any such renovation, construction or demolition shall be subject to the City's design standards.

(4) The requirements of this Section are in addition to all other land use and zoning requirements of the City. Before the City Council may review any application under this Section, the applicant must first receive all necessary zoning approvals.

(5) The City shall not issue a building permit or site development plan for any of the following activities until a Certificate of Architectural Compatibility ("COAC") has been issued for the project.

a. Construction of a new building, structure or improvement;

b. Alteration or reconstruction of, or addition to, the exterior of any improvement;

c. Demolition of any improvement;

d. Construction or erection of or addition to any improvement upon any land located within the City; or

e. Excavation requiring an excavation permit.

(6) For a building permit application, if a COAC for the project has been denied, the Chief Building Official shall deny the application for a building permit for the project. If a COAC for the project has been issued, the building permit shall be subject to the terms and conditions of the approved COAC in addition to any other terms and condi-
tions imposed by the City. For the purposes of the issuance of a building permit, a COAC is valid for six (6) months after the date it is issued.

(b) Definitions. As used in this Section, the following terms have the following meanings:

(1) **Certificate of Appropriateness (COA)** means the certificate pursuant to Article XIX of Chapter 16 of this Code affecting a locally designated historic landmark, issued by the Historic Preservation Commission, and ratified by City Council.

(2) **Certificate of Architectural Compatibility (COAC)** means the certificate issued pursuant to this Section affecting property in the City that has not been locally designated as a historic landmark.

(3) **Major work** means proposed work involving a change in the appearance and attributes of a structure or site; alterations, additions, or removals that are substantial; a change in the appearance and attributes of a structure or site; rehabilitation, preservation, new construction, expansion of or significant improvement to a building footprint or significant changes in landscape features; or demolition of a structure.

(4) **Minor work** means proposed work that is neither routine maintenance nor major work and includes, without limitation, changes in exterior paint color and roof repairs.

(5) **Routine maintenance** means proposed work for the repair or replacement of an existing approved structure where there is no proposed alteration in the design, materials, or general appearance of elements of the structure or grounds.

(c) When required.

(1) A COAC is not necessary for routine maintenance.

(2) A COAC is required for minor work and an application may be reviewed and issued administratively by the City Manager or the City Manager's designee. The City Manager or the City Manager's designee may administratively issue a COAC when the change is minor in nature, or, upon review, the City Manager or the City Manager's designee may determine the application is not appropriate for administrative approval because the proposed work involves alterations, additions, or removals that are substantial, or may not meet the guidelines. If so, the application shall be processed as a major work project and subject to approval by the City Council. In making the administrative determination on a COAC application for minor work, the City Manager or the City Manager's designee shall apply the criteria set forth in Subsections (e)(3) and (e)(4) herein.

(3) A COAC is required for major work and an application shall be reviewed by the City Council pursuant to Subsections (e)(3) and (e)(4) herein.

(4) Exceptions. Where the Chief Building Official, the Department of Health, the Fire Department or any other duly authorized officer or agency of the City orders or directs the immediate construction, reconstruction, alteration, repair or demolition of any improvement for the purpose of remediating conditions determined by that department, agency or officer to be imminently dangerous to life, health or property, nothing contained herein shall be construed as making it a violation of this Chapter for any person to comply with such order or directive without receipt of a COAC. Any such department, agency or officer shall give the City Council notice as early as practicable of the proposed or actual issuance of any such order or directive.

(d) In the event the dangerous condition requires demolition of a building and it is determined by the City Council, after a public
hearing as provided in Section 16-369 of this Code, that the dangerous condition was caused by the affirmative act of the owner of the improvement or his or her authorized agent, or the failure of the owner of the improvement or his or her authorized agent to provide minimum improvement maintenance as required herein, the replacement building or structure shall not exceed the height and floor square footage of the demolished building, and the uses of the replacement building or structure shall only be those uses that were permitted for the demolished building or structure prior to the effective date of the constitutional amendment that authorized limited gaming in the City.

(e) COAC review process.

(1) Minor work. Pursuant to Subsection (c)(2) herein, applications for a COAC involving only minor work may be administratively reviewed, approved, approved with conditions, or denied using the criteria set forth in Subsection (3) below. An applicant for a COAC for minor work may appeal an administrative decision to the City Council in writing within thirty (30) days of the administrative decision. If timely appealed, the City Council shall apply the appropriate criteria de novo and shall issue a final determination within sixty (60) days.

(2) Major work. Upon the City's receipt of an application to authorize major work, including, without limitation, an application for the erection, construction, reconstruction, alteration to, demolition of, or improvement to any property described in Subsection (a)(3) herein, the City Council shall designate a time, place and date for a public hearing pursuant to Section 16-369 of this Code. Following the hearing, City Council shall approve, deny, or approve the application with conditions. City Council's decision is the final determination on the application, subject to judicial review.

(3) Except for applications seeking a COAC for demolition of a structure, which review is controlled by the criteria in subsection (4) below, in considering the issuance of a COAC, the City shall consider the following:

a. All plans, drawings and photographs as may be submitted by the applicant;

b. If a public hearing is required, any information presented at a public hearing held concerning the proposed work;

c. The purpose of this Chapter;

d. Compliance with this Code and the payment of all fees required by this Code;

e. The effects of the proposed work upon the protection, enhancement, perpetuation and use of the City which cause it to possess a special character or special historical or aesthetic interest or value; and

f. Compliance with the City's residential or commercial design standards, as appropriate, including, but not limited to, reference to the historical and architectural style, the general design, arrangement, texture, materials and color of the development, building or structure in question or its appurtenance fixtures; the relationship of such features to similar features of the other buildings within the City the position of the building, structure, park or open space in relation to public rights-of-way and to other buildings and structures in the City.

(4) In considering the issuance of a COAC to authorize a proposed demolition of a structure, the City shall refer the question of demolition to the City's Historic Preservation Commission for a recommendation only on structures that are over fifty (50)
years old, and the City Council and the Historic Preservation Commission, as applicable, shall consider the following:

a. All plans, drawings and photographs as may be submitted by the applicant;

b. Any information presented at the public hearing held concerning the proposed work;

c. The purpose of this Chapter;

d. Compliance with this Code and the payment of all fees required by this Code;

e. The effects of the proposed work upon the protection, enhancement, perpetuation and use of the City which cause it to possess a special character or special historical or aesthetic interest or value;

f. Compliance with the City’s residential or commercial design standards, as appropriate, including, but not limited to, reference to the historical and architectural style, the general design, arrangement, texture, materials and color of the development, building or structure in question or its appurtenance fixtures; the relationship of such features to similar features of the other buildings within the City, the position of the building, structure, park or open space in relation to public rights-of-way and to other buildings and structures in the City;

g. Whether the improvement has been maintained as provided in this Chapter; and

h. Whether the preservation of the improvement is technologically and economically feasible.

(5) Any applicant for a COAC may appeal a final determination of the City Council related to the COAC to the District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

(f) Extension of time limits. Any time limits set forth in this Chapter may be extended by mutual consent of the City Council and the applicant.

(g) Minimum improvement maintenance.

(1) It shall be unlawful and a public nuisance for any person to own, occupy or to lease, rent or otherwise allow occupancy by others, of any building or structure which, by negligent act or omission, does not comply with the provisions of this Section.

(2) Every building or structure shall be kept and maintained in good condition and repair, so that:

a. All foundations, exterior walls, roofs and all appurtenances thereto shall be substantially weathertight and rodent-proof;

b. All exterior wood surfaces shall be adequately protected from water seepage and decay;

c. All windows, exterior doors and basement entryways shall be reasonably weathertight, watertight and rodent-proof;

d. All exterior stairways shall be safe for normal use; and

e. All runoffs from rain, snow or ice shall drain from all roofs and away from all foundations so to avoid dampness in basements, walls, ceilings and floors and erosion of any exterior walls.
(h) For the purpose of determining and ensuring compliance with this Section, the Chief Building Official may make inspections to determine compliance with this Section. Any municipal judge of the Municipal Court shall have power and authority to issue search warrants upon a showing of reasonable cause to believe that a building or structure is in violation of the provisions of this Section. It shall be unlawful for any owner or occupant of a building or structure to refuse entry to the premises by an authorized City representative acting pursuant to a duly issued search warrant.

(i) Whenever the Chief Building Official has discovered conditions of a building or structure which violate the provisions of this Section, such inspector shall notify the owner or occupant of such violation in writing and of the need to correct or abate such violation within a reasonable time. The reasonable time to correct or abate the violation shall be at least sixty (60) days, unless the violation poses an imminent danger for the health, safety or welfare of the occupants or the public, then a shorter time shall be required.

(j) The written notice of violation shall be served by an authorized City representative by delivering a copy thereof to the owner or occupant of the building or structure described in the notice, and if the building or structure is unoccupied or the owner is a nonresident, then also by mailing a notice to the last known address of the owner as reflected in the County real estate records.

(k) Any notice issued pursuant to the provisions of this Section to the owner, agent or occupant of a dwelling where a violation has been discovered shall describe the condition or conditions which violate this Section; shall provide reasonable time to correct or abate the noncomplying condition; and shall state that the owner, agent or occupant may protest the findings of the authorized Chief Building Official as stated in the notice by filing a written notice with the City Council within sixty (60) days after the date of the notice.

(l) Any person affected by a notice issued under this Section who is aggrieved thereby, and who believes the same to be factually or legally contrary to this Section, may protest the notice in writing to the City Council within sixty (60) days after the date of the notice. Upon receipt of a timely written protest, the City Council shall designate a time, place and date for public hearing according to the public hearing procedures provided herein.

(m) The Chief Building Official may cause a copy of the notice of violations under this Section to be recorded with the County Clerk and Recorder's office. When the owner or occupant has corrected or abated the condition or conditions that were the basis of such notice, the Chief Building Official shall cause a release of such notice to be recorded with the County Clerk and Recorder's office.

(n) Enforcement.

(1) Any person violating any provision of this Chapter shall be subject to a fine of the amount set forth in Section 1-73 of this Code or by imprisonment not exceeding one year, or by both such fine and imprisonment. Each and every day during which violation continues shall be deemed a separate offense and shall be prosecutable and punishable as a separate offense.

(2) If any building or structure is erected, constructed, externally reconstructed, externally altered, added to or demolished in violation of this Chapter, the City or any proper person may institute an appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, exterior alteration, addition or demolition.
(3) If any building or structure is demolished in violation of this Chapter, no replacement building or structure shall exceed the height and the floor square footage of the demolished building. In the event such demolition has been accomplished without previous review by the City Council, the City Council is authorized to conduct a hearing, after notice as provided in Section 16-369 of this Code, at which hearing the Board shall consider whether the uses to be made within any replacement building or structure shall be limited to some or all of those uses permitted prior to the effective date of the constitutional amendment that authorized gambling in the City.

(4) The imposition of any penalty hereunder shall not preclude the City or any proper person from instituting any proper action or proceeding to require compliance with the provisions of this Chapter and with administrative orders and determinations made hereunder.

(5) Any person aggrieved by a decision or action of the City Council may appeal the decision or action, directly to the District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure. For purposes of this Section, an aggrieved person shall mean the owners of the subject property and the owners of all real property directly adjacent to the subject property. (Ord. 2018-31 §1)

Editor’s note: Ord. No. 2018-31, § 1, adopted November 14, 2018, repealed the former § 16-368, and enacted a new § 16-368 as set out herein. The former § 16-368 pertained to City Council historic review process. See the Disposition of Ordinances Table for complete derivation.

Sec. 16-369. Notice of public hearings.

Notice of public hearings before the Board of Aldermen or the Board of Appeals shall be given according to the following process:

(1) Purpose. All land use applications that require a public hearing before the Board of Aldermen or Board of Appeals shall be subject to these requirements. This process is intended to provide for adequate notification ensuring the opportunity for public participation on land use proposals within the City.

(2) General provisions.

   a. It is the responsibility of the applicant to meet these requirements prior to the established hearing date.

   b. The Board of Aldermen or the Board of Appeals may continue the hearing to a date certain and may keep the hearing open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be pursued by the applicant unless a period of six (6) weeks or more elapses between the hearing dates, before the same board. In situations where this time period has passed, the applicant shall be required to publish the "NOTICE OF PUBLIC HEARINGS" provided for in Subparagraph (3)a only.

   c. These public notice requirements apply to all land within the jurisdiction of the City, as well as those parcels subject to the consideration of and petitioning for annexation to the City boundaries.

   d. No public hearing shall commence, nor testimony be taken until these procedures are met by the applicant.

(3) Public notice procedures.

   a. At least fifteen (15) days prior to a public hearing, a notice shall be published at least one (1) time in the legal notice section of a general circulation newspaper within the City. A publisher's affidavit shall be submitted to the Planning Director prior to the hearing date to verify the publication of the required notice. The notice shall read as follow:
NOTICE OF PUBLIC HEARINGS

Notice is hereby given that the (insert name of appropriate board) shall hold public hearings concerning (type of application request), located on property described in Exhibit A and generally located at (distance and direction of nearest major intersection), pursuant to the City of Black Hawk zoning ordinance.

The public hearing is to be held before the (insert name of appropriate board) on (date), 19__, at (time - a.m./p.m.), or as soon as possible thereafter. The public hearings shall be held in the City of Black Hawk City Hall, or at such other time or place in the event these hearings are adjourned.

ALL INTERESTED PARTIES MAY ATTEND.

EXHIBIT A (Legal Description)

b. At least fifteen (15) days prior to a public hearing, a notice shall be posted on the property for which the land use application is made. These notices shall consist of at least one (1) sign facing each adjacent public right-of-way. In the case of a variance request, only one (1) sign shall be posted on site in the general vicinity the variance is being considered. These notices shall be in the form of signs measuring not less than twenty-four (24) inches by twenty-eight (28) inches, with lettering a minimum of one-half (1/2) inch high and on posts no less than four (4) feet above the ground. These notices shall read:

NOTICE OF PUBLIC HEARINGS

Notice is hereby given that the property upon which this sign is posted shall be considered at public hearing for (type of application request) pursuant to the City of Black Hawk zoning ordinance. The public hearings are to be held before the (insert name of appropriate board) on (date), 19__, at (time - a.m./p.m.), or as soon as possible thereafter. The public hearing shall be held in the City of Black Hawk City Hall.

(Ord. 94-11 §1; Ord. 98-33 §27; Ord. 2009-23 §12)

Sec. 16-370. Fees.

(a) Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters may be charged to applicants for zoning permits, conditional use permits, special use permits, subdivision plat approval, zoning amendments, variances and other administrative relief. The amount of the fees charged shall be established by resolution of the City Council filed in the office of the City Clerk.

(1) Residential land use fees. No fees for land use associated applications shall be charged or collected if the residence for which the application is made was constructed prior to 1991 and is located within the Historic Residential (HR) Zoning District, and all land use applications are made in accordance with the Municipal Code of the City of Black Hawk, as adopted by the City Council. This includes professional and/or consulting services fees.

(2) Any property owner that creates improvements or adds land use items that are not in compliance with the land use regulations of the City of Black Hawk shall automatically be responsible for any City cost needed to work toward proper compliance on the property. This includes any consultant costs or fees that are provided to assist with and directed to the property owner to bring the property into proper compliance with the regulations of the City of Black Hawk.

(b) The City will bill applicants for any and all costs of professional or consulting services which the City incurs as a result of an applicant or his or her project. Professional or consulting services include, but are not limited to: legal, engineering, planning, surveying, or hydrological services.

(c) Fees established in accordance with Subsection (a) shall be paid upon submission of a completed land use application or notice of appeal. All applications for which there is a fee shall be accompanied by the appropriate fee. Applications which are not accompanied by the
appropriate fee shall be considered incomplete and shall not be processed nor shall any permit be issued unless the appropriate fee accompanies the application. The applicant shall pay the City the actual cost to the City for engineering, planning, surveying, inspection and legal services rendered in connection with the review of the proposed development application plus fifteen percent (15%) to cover administrative costs. The City will send the applicant a statement for the actual and administrative costs incurred by the City for the services rendered by the City. The applicant shall pay the City the amount due on the statement within fifteen (15) days of the date of the issuance of such statement. In the event the applicant fails to pay the amount due on the statement within the time period specified above, the City shall immediately stop the review process for the proposed development. The application will be deemed withdrawn if the statement is not paid in full within thirty (30) days of the date of the issuance of the statement.

If the statement is not paid in full within thirty (30) days after issuance of the statement, in addition to the application being withdrawn, the City shall impose interest on the amount due and outstanding at the rate of one and one-half of one percent (1.5%) per month from the date when due.

In addition to the City's remedies to stop the review process upon nonpayment of such statement, and to impose penalty interest, the City shall additionally possess the right to initiate an enforcement action against the applicant for nonpayment of such fees. Such enforcement action may be initiated either in the Gilpin County Court or in the Black Hawk Municipal Court. In the event such collection action is determined in favor of the City, the City shall be awarded its attorneys' fees and court costs in addition to the unpaid fees as part of any judgment.

The payment of fees of the costs of professional and consulting services under this Section shall be due and payable as set forth within this Section, regardless of whether the project is completed, approved and/or regardless of whether the owner/applicant chooses to complete the City's land review process under the City's zoning ordinance and subdivision regulations.

(d) The applicant shall pay any impact fees as established by City ordinances in effect at the time the development application is approved by City Council. The impact fees shall be paid at the time specified by such ordinance. (Ord. 94-11 §1; Ord. 98-60 §6; Ord. 2017-9 §2)

Sec. 16-371. Correction of erroneous legal descriptions.

(a) When the City discovers, at any time after a rezoning or planned unit development process, that the legal description submitted as a part of the rezoning or planned unit development process is erroneous, and therefore the City's zoning map contains errors, the City may correct the errors in the legal description by ordinance by following the procedures established in this Section. The errors may be brought to the City's attention by City staff or the affected property owner.

(b) At least thirty (30) days prior to the consideration of an ordinance to correct the legal description, the City shall notify the affected property owner of the errors in the legal description. The notice shall be in writing, sent via first class mail, postage prepaid, to the last known address of the affected property owner. The notice shall include the following information, at a minimum:

(1) A general description of the affected property, by street address or by the name of the project;

(2) The date of the ordinance approving the rezoning or planned unit development application, and the ordinance number;
(3) A map depicting the errors in the existing legal description;

(4) The corrected legal description; and

(5) A statement that the Board of Aldermen will correct the legal description by ordinance, unless a written objection is filed by the property owner within fifteen (15) days of the date of the notice, stating the reason(s) for the objection.

c) If no objections are received, the Board of Aldermen, not less than thirty (30) days after the notice described in subsection (b) is mailed, shall correct the legal description by ordinance.

d) If objections are received, the Board of Aldermen shall not consider an ordinance to correct the legal description until the objections have been reviewed and considered by City staff, and City staff has made a recommendation to the Board of Aldermen.

e) The City Clerk shall file a copy of the ordinance correcting the legal description with the County Clerk and Recorder. (Ord. 2001-11 §1)

Sec. 16-372. Temporary uses and structures.

(a) Temporary uses of property and the placement of temporary structures within the City are prohibited, except as permitted in this Section. Temporary structures, other than temporary vendor carts for short-term special events or temporary vendors for the vending of food and/or beverages exclusively, shall be allowed in all nonresidential zone districts subject to all of the following conditions:

(1) Temporary structures may be used for storage or office uses during the construction of a project within the City upon issuance of a permit therefor. The structure's location, size and general design shall be disclosed to the City as part of the application for a temporary structure permit, as detailed in Subsection (b) below.

(2) Temporary structures shall comply with all existing requirements of the zoning district within which the temporary use is sought, including setback, height and any other applicable regulations.

(3) Temporary structures may also be used to replace an existing structure being demolished on site while a new, permanent structure on the same site is being constructed. In such case, a temporary structure shall have no greater floor area than the structure it is temporarily replacing.

(4) Temporary structures shall not be placed on site prior to the issuance of a building permit and shall be removed upon issuance of a certificate of occupancy or a final building inspection for the new or remodeled structure. The structure must be located on the property indicated by a recorded plat or final site plan. The structure can be with or without utilities or services.

(5) The applicant for approval of a temporary use or structure shall provide security as determined appropriate by the City to ensure the complete removal of the structure, site cleanup and site revegetation, once the permit for the temporary structure has expired.

(6) Exemptions. Temporary tents, air structures or other similar structures, not intended for office, retail, industrial or commercial uses, shall be exempt from the provisions of this Section, subject to all other relevant provisions of this Chapter.
(b) Permitting process. Issuance of a permit shall be required prior to commencement of a temporary use or the placement or use of a temporary structure. Application for a permit shall be accompanied by the following information:

1. A temporary use or structure permit application.
2. A plot plan for the site that shall include:
   a. All required setbacks for the district in which the temporary structure is located.
   b. Access to the temporary structure from a public right-of-way.
   c. Dimensions of all existing and proposed structures.
   d. Location of required off-street parking and loading areas.
3. An authorization letter from the legal property owner giving the applicant permission to apply for the permit.

(c) Permits. Temporary use or temporary structure permits may be issued by the City Manager or his or her designee for a period of up to six (6) months. Extensions of up to an additional six (6) months may be granted for construction projects that are otherwise in compliance with all necessary permits and only if application for such extension is made prior to the expiration of the temporary use or temporary structure permit. The City Manager is authorized to impose reasonable conditions upon the issuance of any temporary use or temporary structure permit to assure that any such authorization is exercised in a manner consistent with the public health, safety and welfare of the general public.

(d) Appeal of City Manager decision. Any decision by the City Manager or the City Manager's designee shall be appealable to the Board of Aldermen sitting as the Board of Appeals pursuant to Subsection 16-326(b) of this Code. (Ord. 2009-10 §1)

Secs. 16-373—16-390. Reserved.

ARTICLE XVIII

Commercial Mobile Radio Service Facilities

Sec. 16-391. Purpose.

The purposes of this Article are: to facilitate the provision of wireless telecommunications services throughout the City; to allow the location of commercial mobile radio service facilities ("CMRS facilities") in the City subject to certain standards; to act on applications for the location of CMRS facilities within a reasonable period of time; to encourage co-location of CMRS facilities; and to avoid unreasonable discrimination among providers of functionally equivalent services. (Ord. 98-7 §1)

Sec. 16-392. Definitions.

Accessory equipment for a CMRS facility means equipment, including buildings and structures, used to protect and enable radio switching equipment, back-up power, support structures and other devices incidental to a CMRS facility, but not including antennae.

Base station means a structure or equipment, other than a tower, at a fixed location that enables Federal Communications Commission-licensed or authorized wireless communications between user equipment and a communications network. The term includes any equipment associated with wireless communications services, including radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems.
and small-cell networks). The term includes any structure, other than a tower, to which any of the equipment described hereof is attached.

Building roof-mounted CMRS facility means a CMRS facility that is mounted and supported entirely on the roof of a legally existing building or structure.

Building wall-mounted CMRS facility means a CMRS facility that is mounted and supported entirely on the wall of a legally existing building or structure.

Co-location means the location of two (2) or more CMRS facilities on the same support structure. Two (2) or more separate facilities located on one (1) building shall not be considered co-location.

Commercial mobile radio service facility or CMRS facility means an unmanned facility consisting of antennae, accessory equipment and equipment storage shelters, and used for the reception, switching, transmission or receiving of wireless telecommunications operating at one thousand (1,000) watts or less effective radiated power, and using frequencies authorized by the Federal Communications Commission ("FCC"), including, but not limited to, paging, enhanced specialized mobile radio, personal communication systems, cellular telephone, point-to-point microwave signals and similar technologies.

Eligible telecommunications facility request means a request for approval of the modification of an existing tower or base station that involves the collocation of new transmission equipment, the removal of transmission equipment or the replacement of transmission equipment.

Equipment storage shelter means buildings, storage shelters and cabinets used to house CMRS facility equipment.

Freestanding CMRS facility means a CMRS facility that consists of a stand-alone support structure, antennae and accessory equipment.

Microwave dish antenna means a disk-type antenna used to link communication sites together by wireless voice or data transmission.

Pole-mounted CMRS facility means a CMRS facility that is mounted and supported entirely on a legally existing traffic signal, utility pole, street light, flagpole, freestanding CMRS facility, electric or transmission line support tower or other similar structure.

Substantial change means a modification to an existing tower or base station under the following circumstances:

(1) A substantial change in the height of an existing tower or base station occurs as follows:

a. For a tower outside of a public right-of-way, when the height of the tower is increased by more than ten percent (10%), or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater.

b. For a tower located in a public right-of-way or for a base station, when the height of the structure increases by more than ten percent (10%) or by more than ten (10) feet, whichever is greater.

(2) Changes in height are measured as follows:

a. When deployments are separated horizontally, changes in height shall be measured from the original support structure, not from the height of any existing telecommunications equipment.
b. When deployments are separated vertically, changes in height shall be measured from the height of the tower or base station, including any appurtenances, as the tower or base station existed on February 22, 2012.

(3) A substantial change in the width of an existing tower or base station occurs as follows:

a. For a tower outside of public rights-of-way, when the addition of an appurtenance to the body of the tower protrudes from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater.

b. For a tower in a public right-of-way or a base station, when the addition of an appurtenance to the body of the structure would protrude from the edge of the structure by more than six (6) feet.

(4) A substantial change also occurs for an existing tower in a public right-of-way or an existing base station as follows:

a. When the change involves the installation of any new equipment cabinets on the ground, if no ground cabinets presently exist, or

b. When the change involves the installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any existing ground cabinets.

(5) A substantial change also occurs for any existing tower or base station when any of the following are found:

a. When the change involves installation of more than the standard number of new equipment cabinets for the technology involved, or more than four (4) new cabinets, whichever is less.

b. When the change entails any excavation or deployment outside the current site.

c. When the change would defeat the concealment elements of the eligible support structure.

d. When the change does not comply with conditions associated with the original siting approval of the construction or modification of the tower, base station or base station equipment.

This limitation does not apply if the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in Subsections (1) through (5)(b), hereof.

Tower means a structure built for the sole or primary purpose of supporting any Federal Communications Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. (Ord. 98-7 §1; Ord. 2014-6 §1; Ord. 2015-13, §§1, 2)

Sec. 16-394. Co-location.

The City encourages co-location of CMRS facilities when feasible to minimize the number of CMRS facility sites. To further the goal of co-location:

(1) No CMRS facility owner or operator shall unfairly exclude a telecommunications competitor from using the same facility or
location. Upon request by the City, the owner or operator shall provide evidence explaining why co-location is not possible at a particular facility or site.

(2) If a telecommunications competitor attempts to co-locate a CMRS facility on an existing or approved CMRS facility or location, and the parties cannot reach an agreement, the City may require a third-party technical study to be completed at the expense of both parties to determine the feasibility of co-location. (Ord. 98-7 §1)

Sec. 16-395. Compliance with FCC standards.

A CMRS facility shall comply with the current FCC regulations prohibiting localized interference with reception of television and radio broadcasts and the current FCC standards for cumulative field measurements of radio frequency power densities and electromagnetic fields. (Ord. 98-7 §1)

Sec. 16-396. Abandonment.

If the CMRS facility ceases operation for any reason for one hundred eighty (180) consecutive days:

(1) The owner or operator shall remove it on or before the 270th day, and if the facility owner or operator fails to remove the facility, removal shall become the responsibility of the landowner.

(2) Failure to timely remove an abandoned CMRS facility shall constitute a code violation. (Ord. 98-7 §1)

Sec. 16-397. Equipment storage shelters.

Equipment storage shelters for CMRS facilities shall adhere to the following design standards to minimize impacts:

(1) Equipment storage shelters located outside shall be screened from view by vegetation, fencing or comparable screening.

(2) No equipment storage shelter shall exceed fifteen (15) feet in height.

(3) The total area of all equipment storage shelters shall not exceed four hundred (400) square feet per facility. (Ord. 98-7 §1)

Sec. 16-398. Freestanding CMRS facilities.

(a) An application for administrative approval pursuant to Section 16-401 of this Article shall be required prior to location of a freestanding CMRS facility in any zone district.

(b) Minimum setback. A freestanding CMRS facility shall be set back from each property line one (1) foot of distance for every foot of facility height.

(c) Maximum height. A freestanding CMRS facility, including antennae, shall not exceed the maximum structure height limit in the underlying zone district unless the administrative or other written approval specifically allows the facility to exceed that limit.

(d) A freestanding CMRS facility shall meet the following design standards to minimize impacts:

(1) The facility shall be designed to be compatible with surrounding buildings and structures and existing or planned uses in the area, subject to applicable Federal Aviation Administration ("FAA") regulations.

(2) Existing land forms, vegetation and structures shall be used to screen the facility from view and blend in the facility with the surrounding environment, where feasible.

(3) Existing vegetation shall be preserved or enhanced, where feasible.

(4) The facility shall not be lighted unless required by the FAA.
(5) All freestanding CMRS facilities shall accommodate co-location of facilities, unless co-location is technically unfeasible.

(6) Any equipment that could be dangerous to persons or wildlife shall be adequately fenced.

(7) The diameter of a microwave dish antenna shall not exceed four (4) feet. (Ord. 98-7 §1)

Sec. 16-399. Building-mounted CMRS facilities.

(a) A building wall-mounted CMRS facility shall adhere to the following design standards to minimize impacts:

(1) The facility shall be screened from view and/or colored to match the building or structure to which it is attached.

(2) The mounting of antennae shall be as flush to the building wall as possible, and in no case shall the antennae extend more than three (3) feet out from the building wall.

(3) If the roof of the building is pitched, the facility shall not extend above the roof line of the building.

(4) If the roof of the building is flat, the facility shall not extend above the highest point of the building, including roof-mounted appurtenances.

(b) A building roof-mounted CMRS facility shall adhere to the following design standards to minimize impacts:

(1) A building roof-mounted CMRS facility, including antennae, shall not extend more than fifteen (15) feet above the roof line of the building on which the facility is mounted. For purposes of this Section, roof line shall include parapets but not equipment or other facilities.

(2) The facility shall be screened from view and/or colored to match the building or structure to which it is attached.

(3) The diameter of a microwave dish antenna shall not exceed four (4) feet.

(c) Accessory equipment for a building-mounted CMRS facility shall be placed inside the building if feasible. (Ord. 98-7 §1)

Sec. 16-400. Pole-mounted CMRS facilities.

A pole-mounted CMRS facility shall adhere to the following design standards to minimize impacts:

(1) The facility shall be designed to be compatible with surrounding buildings and structures and existing or planned uses in the area.

(2) The facility shall be colored to match the pole or structure to which it is attached. (Ord. 98-7 §1)

Sec. 16-401. Application and approval procedures.

(a) A CMRS facility applicant shall follow the application and approval procedures set forth in this Article, and shall not be subject to the standards set forth in Sections 16-261 through 16-283 of this Chapter.

(b) Administrative approval.

(1) An application to locate a CMRS facility in any zone district shall include the following:

a. A site plan on twenty-four-inch by thirty-six-inch (24" x 36") sheets which includes the following:

1. The location of all proposed and existing improvements on the property;
2. A north arrow;

3. Scale (written and graphic);

4. Scaled building elevations, if applicable; and

5. The legal description of the property.

b. A title commitment or other proof of ownership of the property, or, if the property is leased, a signed and notarized letter of authorization from the property owner.

c. Photographic simulations showing the proposed facility and the structure on which it will be mounted, if applicable.

d. An access plan and utility plan, if applicable.

e. A written, narrative statement describing in detail how the proposed CMRS facility will comply with each of the applicable design standards outlined in this Article.

(2) Application submittal. An application for administrative review of a proposed CMRS facility location shall be submitted to the Planning Department.

(3) Review. The Planning Director shall consider whether the proposed facility meets the design standards set forth in this Article, and shall confer with the Public Works Department to ensure that the proposed facility conforms to the City’s technical criteria.

(4) Decision. The Planning Director shall issue a written decision approving or denying the application. Except with respect to an eligible telecommunications facility request that must be approved pursuant to Subsection (e) hereof, the Planning Director may impose reasonable conditions of approval.

(5) Appeal. If the Planning Director denies the application, the applicant may appeal the Planning Director’s decision to the Board of Appeals pursuant to Section 16-366.

c. City-owned property. The Board of Aldermen shall hold a public hearing to decide on any application to locate a CMRS facility on city-owned property, following the procedure set forth in Section 16-369. At the public hearing, the Board of Aldermen shall consider whether the proposed facility meets the design standards set forth in this Article, and issue a written decision approving or denying the application. The Board of Aldermen may impose reasonable conditions of approval.

d. Application denial. A final decision by the City to deny an application for a CMRS facility under this Article shall be in writing and supported by substantial evidence contained in a written record.

e. Eligible telecommunications facility requests.

(1) Any modification to a CMRS facility that differs from the original design that was approved by the City shall require new application and approval. Notwithstanding the foregoing, the City may, in its sole discretion, waive or postpone the submittal of any application requirement detailed in this Section when considering a modification request.

(2) Application materials.

a. An applicant for an eligible telecommunications facility request shall be required to submit only such documentation and information as is reasonably necessary to determine whether a proposed
modification would substantially change the physical dimensions of an eligible tower or base station.

b. The City shall make available an application form which shall be limited to the information necessary for the City to consider whether an application would substantially change the physical dimensions of an eligible tower or base station. The application form may not require the applicant to demonstrate a need or business case for the proposed modification or collocation.

(3) Incomplete applications.

a. When an application is incomplete, the City shall provide written notice to the applicant within thirty (30) days, specifically identifying all missing documents or information.

b. If an application remains incomplete after a supplemental submission, the City shall notify the applicant within ten (10) days. Second or subsequent notices of incompleteness may not require the production of documents or information that were not requested in the original notice of incompleteness.

(4) Expedited review.

a. An eligible telecommunications facility request shall be approved or denied by the City within sixty (60) days of the date of the City's receipt of the completed application. This time period may be tolled only by mutual agreement or where an application is incomplete.

b. If the City fails to approve or deny an eligible telecommunications facility request within the time frame for review (accounting for any tolling), the request shall be deemed granted; provided that this automatic approval shall become effective only upon the City's receipt of written notification from the applicant after the review period has expired (accounting for any tolling) indicating that the application has been deemed granted.

(5) Review.

a. The Planning Director shall review the application to determine whether the application qualifies as an eligible telecommunications facility request.

b. Approval.

1. The City shall approve an eligible telecommunications facility request that does not substantially change the physical dimensions of a tower or base station.

2. The City may approve an eligible telecommunications facility request that substantially changes the physical dimensions of a tower or base station if it complies with the remainder of this Code.

3. The City may condition the approval of any eligible telecommunications facility request on compliance with generally applicable building, structural, electrical, and safety codes or with other laws codifying objective standards reasonably related to health and safety.

c. Denial. A final decision by the City to deny an eligible telecommunications facility request under this Section shall be in writing and shall include the reason(s) for denial. (Ord. 98-7 §1; Ord. 2009-13 §1; Ord. 2014-6 §2; Ord. 2015-13, §3)

Sec. 16-402. Height limit.

In no case shall a CMRS facility located on property owned by the City or in any public
right-of-way exceed forty (40) feet in height. (Ord. 2016-14 §2)

Secs. 16-403—16-420. Reserved.

ARTICLE XIX

Historic Preservation

Sec. 16-421. Purpose and applicability.

(a) The purpose of this Article is to:

(1) Foster civic pride in the beauty and accomplishments of the past and promote the use of historic landmarks for the education and pleasure of the City's citizens.

(2) Protect the unique scenic and historic atmosphere and character of the City and protect the architectural, cultural and aesthetic heritage of the City.

(3) Strengthen the City's economy by protecting and enhancing the City's attractions for visitors.

(4) Preserve and protect the continued existence of historic landmarks that are not otherwise protected by federal designation.

(5) Draw a reasonable balance between the desires of property owners and the preservation of the City's heritage, while avoiding the imposition of an unreasonable economic hardship.

(6) Prevent the use of materials or design in the repair, construction, reconstruction or remodeling of structures which:

a. Adversely affect the desirability of the City's historic landmarks for business and residential purposes; or

b. Are hazardous or incompatible with the City's historic landmarks.

(b) This Article shall apply to all locally designated historic landmarks within the City. All other properties in the City are regulated by the City Council for compatibility pursuant to Section 16-368 of this Code.

(c) This Article shall be interpreted and administered to promote the spirit of historic preservation, to promote public health, safety and welfare and to achieve substantial justice. (Ord. 2009-13 §3; Ord. 2018-31 §2)

Sec. 16-422. Definitions.

For the purposes of this Article, the following terms shall have the following meanings:

Building Official means the City official charged with the responsibility of administering and enforcing the City's building codes.

Certificate of Appropriateness (COA) means the official document issued by the Commission and ratified by the City Council approving an application or permit for the erection, moving, demolition, alteration or addition to, or the external construction or external restoration of a locally designated historic landmark. A COA, once issued, will expire under the same conditions as its associated building permit.

Commission means the Historic Preservation Commission created pursuant to this Article.

Contributing building means a building that is at least fifty (50) years old or older or is associated with significant people or events. In the context of this Article, a contributing building is one of significance used for defining context and which retains a significant amount of its physical integrity and character-defining features.

Designated historic resource means a public or private building, home, replica, structure, object, property, park or site that has
importance in the history, architecture, archeology or culture of the City, state or nation, as locally designated by the Commission.

(Guidelines means the most recent version of any and all design guidelines approved and adopted by the City Council for application to historic landmarks.

(Historic district means a significant concentration, linkage or continuity of historic resources united historically or aesthetically by plan or physical development.

(Historic landmark means a designated historic resource or a historic district designated locally by the City's Historic Preservation Commission.

(Landowner means the owner in fee of any undivided interest in a historic landmark or of any proposed historic landmark. If the mineral estate has been severed, the landowner is the owner in fee of an undivided interest in the surface estate and not the owner in fee of an undivided interest in the mineral estate.

(Noncontributing building means a building, regardless of age, that has lost its integrity. These buildings do retain value as residential or commercial properties, but do not possess the significance and/or physical integrity necessary to be listed as contributing.

(Secretary of the Interior Standards means the United States Secretary of the Interior's Standards for Treatment of Historic Properties. (Ord. 2009-13 §3; Ord. 2018-31 §2)

Sec. 16-423. Historic Preservation Commission.

(a) There is hereby created a Historic Preservation Commission, which shall have the principal responsibility for matters involving historic landmarks as set forth in this Article.

(b) The Commission shall consist of five (5) regular members who are residents of the City and who provide balanced, community-wide representation. All Commission members shall have an interest in historic preservation. The Commission shall consist of at least forty percent (40%) professionals in preservation-related disciplines, such as architecture, landscape architecture, architectural history, archeology, history and planning, or related disciplines such as building trades, real estate, law, cultural geography or cultural anthropology.

(c) If the required number of professional members cannot be found to serve on the Commission, this requirement may be waived until the next vacancy occurs, at which time the City shall again diligently seek professional representation. In the case of a lack of professional appointees, the Commission may, with Council approval, be allowed to retain professional consultants to advise the Commission as necessary to fulfill its duties.

(d) Commissioners shall serve for four-year overlapping terms, with three (3) of the initial members being appointed for a four-year term and two (2) members serving for a two-year term. Members shall continue to serve after the expiration of their terms until a successor is duly qualified and appointed by the City Council.

(e) From its members, the Commission shall select a chair and vice chair at the first meeting of each calendar year.

(f) The Commission shall meet at least quarterly, unless applications or other requests for action are pending, in which case the Commission shall meet more frequently, as necessary. All Commission meetings shall be open to the public with exceptions for executive sessions and as provided under state law.

(g) A majority of the number of currently appointed Commission members shall constitute a quorum. If a quorum is not present, the
chair of the Commission may set a new date for a special hearing or the matters scheduled for that hearing shall be heard on the next regularly scheduled hearing date.

(h) The Commission shall adopt bylaws and other administrative guidelines to govern the conduct of its meetings. Copies of the bylaws and administrative guidelines shall be held at the City Hall and shall be open for public inspection. (Ord. 2009-13 §3)

Sec. 16-424. Authority.

(a) The Commission shall recommend to the City Council the designation of historic landmarks and the revocation of such designations.

(b) The Commission shall review applications and issue COAs, for building permits and demolition permits affecting locally designated historic landmarks for ratification by the City Council.

(c) The Commission shall have any other duties as may be established by the City Council and shall have all powers necessary to perform its duties.

(d) The City Council shall consider the Commission's recommendations for the approval or revocation of historic landmark designations, ratify COAs issued by the Commission, and review COA application denials appealed from the Commission.

(e) The City Council shall generally monitor and review the Commission's performance of its responsibilities pursuant to this Article.

(f) The City Council may promulgate, amend and delete guidelines and adopt additional regulations, as necessary and appropriate, for the interpretation, administration and enforcement of this Article. (Ord. 2009-13 §3; Ord. 2018-31 §2)

Sec. 16-425. Criteria for designation.

The Commission shall consider the following criteria when reviewing nominations for designation:

(1) Designated historic resources. Resources proposed for historic resource designation shall be at least fifty (50) years old and shall possess architectural, social or geographic/environmental importance by meeting one (1) or more of the following criteria:

a. Exemplifies specific elements of an architectural style or period.

b. Is an example of the work of an architect or builder who is recognized for his or her national, statewide, regional or local expertise.

c. Demonstrates superior craftsmanship or high artistic value.

d. Represents an innovation in construction, materials or design.

e. Represents a style particularly associated with the Black Hawk area.

f. Represents a built environment of a group of people in an era of history.

g. Represents a pattern or grouping of elements representing at least one (1) of the above-mentioned criteria.

h. Has undergone a significant historic remodel.

i. Is the site of a historic event that had an effect upon society.

j. Exemplifies cultural, political, economic or social heritage in the community.
k. Represents an association with a notable person.

l. Is identified with historical personages or groups or which represents important events in national, state or local history.

m. Enhances a sense of identity with the community.

n. Is an established and familiar natural setting or visual feature in the community.

(2) Historic districts. Districts proposed for historic designation shall contain properties that comply with Paragraph (1) above that are related by a pattern of physical elements or social activities. Significance is determined by applying the criteria of this Article to patterns and unifying elements.

a. Historic district designation will not be considered unless the application contains written approval of all property owners within the proposed historic district boundaries.

b. Properties that do not contribute to the significance of the proposed historic district may be included within the boundaries if the noncontributing buildings do not noticeably detract from the proposed historic district's sense of time, place and historic development. Noncontributing elements will be evaluated for their magnitude of impact by considering their size, scale, design, location or information potential.

(3) Any historic landmark listed on the National Register of Historic Places or the Colorado State Register of Historic Properties shall be deemed to qualify for local designation under this Article; however, such landmarks shall not be locally designated until an application for designation is filed and processed pursuant to this Article. (Ord. 2009-13 §3)

Sec. 16-426. Designation procedures.

(a) Application for designation. Landowners of any landmark proposed for designation may submit an application requesting designation to the City Manager or the City Manager's designee. Such application shall be made in writing and set forth why the applicant believes the proposed historic landmark is qualified for designation pursuant to Section 16-425 above.

(b) Commission review. If, in the opinion of the City Manager or the City Manager's designee, the application requirements have been met and the proposed historic landmark meets the criteria for designation, the application shall be referred to the Commission. The Commission shall consider the designation at its next regular meeting and submit its opinion or recommendation to the City Council.

(c) City Council review. Upon receipt of the Commission's recommendation, the City Council shall hold a hearing to consider the application for designation not more than sixty (60) days after the application's filing.

(1) Notice.

a. Written notice of the designation hearing shall be sent to all property owners of record who own or have significant legal or equitable interests in the real property being proposed for designation. Notice shall include the time, date, place and subject matter of the hearing and shall be sent via certified mail not less than seven (7) days prior to the hearing.

b. Signs indicating the proposed action and the time, date and place of the hearing shall be posted by the City for a period of not less than seven (7) days prior to the hearing on all historic landmarks proposed for designation. Such
signs will be prominently displayed and easily readable from abutting public ways.

c. A legal notice indicating the nature of the hearing, the property involved and the time, date and place of the scheduled public hearing shall be published once in the official newspaper of the City not less than seven (7) days prior to the hearing.

d. Written notice of the proposed designation, including the identification of the historic landmark, the basis for the designation, procedure and the time, date and place of the hearing, shall be given to the Building Official not less than seven (7) days prior to the public hearing.

(2) Hearing process.

a. A quorum of the City Council shall conduct the hearing. If a quorum is not present, the hearing shall be rescheduled for the next scheduled City Council meeting.

b. A reasonable opportunity shall be provided to all interested parties to express their opinions regarding the proposed designation.

c. Hearings shall include records of the name and address of each speaker and the organization or person he or she represents, if any. A summary of the relevant portions of each statement and all written presentations shall be incorporated into the record of the hearing.

d. The City Council shall review the proposed designation with respect to:

1. Its relationship to the City's zoning regulations and other adopted planning documents;

2. The effect of the designation upon the surrounding neighborhood; and

3. Such other planning considerations as may be relevant to the proposed designation.

(3) Findings of fact and actions of City Council.

a. The City Council shall act officially on each proposed designation within thirty (30) days of the hearing thereon. The City Council may approve, reject or modify any proposal, but no proposal may be extended beyond the boundaries of the land described in the original designation application unless the initiation and hearing procedure are repeated for the enlarged boundaries. The City Council shall set forth in its records the findings of fact which constitute the basis for its decisions, and due consideration shall be given to the written or oral views of owners of affected property. If the City Council fails to act within the thirty-day period, the designation shall be deemed to have been denied.

b. If more than one (1) property is involved in the designation procedure, the City Council may approve the application in part. In no event may any property be added to the area described in the application without instituting a new designation procedure.

c. Any approved designation of a historic landmark shall be made by ordinance of the City Council.

d. No historic landmark shall be designated without the express written consent of the proposed historic landmark's landowners.
(d) Recording of designation. Within fifteen (15) days of the effective date of an ordinance designating a historic landmark, a copy of the ordinance shall be recorded in the real estate records of the County Clerk and Recorder.

(e) Notification. Within ten (10) days after the recording of the ordinance designating a historic landmark, the City Clerk shall send a letter, via certified mail, to all property owners whose property is subjected to the designation. (Ord. 2009-13 §3)

Sec. 16-427. Revocation of designation.

(a) If a building or physical feature on a historic landmark is lawfully removed or demolished, the owner may apply to the Commission for revocation of designation. The Commission shall recommend revocation of a historic designation if it determines that, without the demolished building or physical feature, the historic landmark as a whole no longer meets the purposes and standards of this Article and the Commission's review standards for historic landmark designation.

(b) Upon the Commission's recommendation to revoke a historic landmark designation, the City Manager shall cause to be prepared a resolution, including the legal description of the affected property, stating notice of the revocation, and schedule the item for City Council review. Upon adoption by the City Council, the revocation resolution shall be recorded within the real estate records of the county in which the property is located.

(c) The City Council may revoke designation of a historic landmark if the public benefits of alteration, removal or demolition of the landmark outweigh the public benefits of maintaining the designation.

(d) Any owner of a historic landmark may request revocation of such designation by submitting an application to the Commission. The request for revocation shall be considered at the Commission's next regular meeting, and the Commission shall submit its recommendation to the City Council. The City Council will consider the application for revocation in accordance with the procedures of Subsection 16-426(c) above. (Ord. 2009-13 §3)

Sec. 16-428. Review procedures for building permits.

(a) Every application for a building permit for a locally designated historic landmark shall first be submitted to the Commission. Such application shall be accompanied by the following:

(1) A drawing, picture or scale model which shows the exterior surfaces of the building as proposed to be constructed, repaired, reconstructed or remodeled, in sufficient detail to depict the finished appearance of the building;

(2) A site plan showing the building's relation to and location on its building site;

(3) A detailed list of the type of exterior materials and finishes proposed to be used; and

(4) A review fee as set forth in the City's fee schedule.

(b) No building permit application for a locally designated historic landmark may be considered by the Commission unless it is complete in accordance with Subsection (a) hereof.

(c) The Commission shall either approve or deny the application, based on the criteria set forth in Section 16-429. The Commission may also conditionally approve the application, with the agreement of the applicant to comply with such conditions. Such conditions shall become conditions of the COA and the building permit.
(d) If the Commission determines that the criteria in Section 16-429 are met and that no additional conditions need to be required, the Commission shall issue the COA and forward a copy of the COA to the City Council for ratification of the COA. Upon ratification by the City Council, the Building Official may then process the building permit as usual.

(e) Ratification by the City Council. Upon approval or conditional approval thereof, the Commission shall refer each COA to the City Council. The City Council may approve, reject or modify the conditions of a COA by de novo review and application of the criteria in Section 16-429 of this Code. If the City Council fails to act within the thirty (30) days of the Commission's issuance of a COA, the Commission's action shall be deemed final and shall be deemed ratified by City Council.

(f) Appeal. An application for a COA for a locally designated historic landmark denied by the Commission may be appealed to the City Council, and City Council shall consider de novo within sixty (60) days whether the application complies with the criteria set forth in Section 16-429. (Ord. 2009-13 §3; Ord. 2018-31 §2)

Sec. 16-429. Criteria for approval.

(a) In order for the Commission to grant a COA for ratification by City Council for any application for a COA for a building permit for a locally designated historic landmark or for demolition of a locally designated historic landmark, the Commission shall determine that the application meets the following criteria:

(1) The proposed work is consistent with and promotes the purposes of this Article;

(2) With respect to an existing building, the proposed work will not adversely materially affect the property's historic quality;

(3) The proposed work will have no adverse material effect on the historic atmosphere and character of the historic landmark, including state and national designations; and

(4) The proposed work is in compliance with all current applicable design guidelines.

(b) In determining compliance with the criteria of this Section with regard to contributing buildings in a locally designated historic district, the Commission shall consider the following:

(1) The effect upon the general historic and architectural character of the building;

(2) The architectural style, arrangement, texture and material used on the existing and proposed buildings and their relation and compatibility with other historic landmarks, including state and national designations;

(3) The effects of the proposed work in creating, changing, destroying or otherwise affecting the exterior architectural features of the building upon which such work is done;

(4) The effects of the proposed work upon the protection, enhancement and perpetuation of the building;

(5) The condition of existing improvements and whether they are a hazard to public health and safety;

(6) The compatibility of accessory buildings, structures and fences with the main building and with other historic landmarks; and

(7) Substantial compliance with the Secretary of the Interior Standards as they apply to building exteriors only, except those relating to paint color, which shall not apply.
(c) With regard to determining compliance of noncontributing buildings, the Commission shall consider the following:

(1) Noncontributing buildings should be compatible with contributing buildings;

(2) Noncontributing buildings should not attempt to mimic or duplicate the historic features of contributing buildings; and

(3) Contemporary designs that creatively draw upon the important characteristics of a historic district are favored. (Ord. 2009-13 §3; Ord. 2018-31 §2)

Sec. 16-430. Exceptions.

(a) The Commission may authorize, upon request in specific cases, exceptions from the requirements of this Article and its implementing guidelines. When the Commission finds that the strict application of any requirement enacted herein will result in unreasonable economic hardship to a landowner or that such exception is necessary in the public interest, an exception from the requirements of this Article and its implementing guidelines may be authorized.

(b) Burden. The burden of proof shall be upon the person claiming hardship to show that the existing use is economically unfeasible and that sale, rental or rehabilitation of the property is not possible.

(c) Procedure. The Commission shall hold a public hearing on all applications for exceptions with the following conditions required:

(1) Notice of said hearing shall be mailed by the City, at least seven (7) days prior to the hearing date, to the applicant and to owners of property within one hundred (100) feet of the property in question. The applicant shall provide stamped, addressed envelopes to the City for that purpose. Failure to mail such notice to every property owner due to clerical omissions shall not affect the validity of any hearing or determination of the Commission. The applicant is, however, obligated to make a good-faith effort to provide all required names and addresses.

(2) The City shall notify the applicant and the Building Official of the Commission's decision. The decision of the Commission may be appealed to the City Council. (Ord. 2009-13 §3)

Sec. 16-431. Demolition.

(a) No locally designated historic landmark may be demolished, in whole or in part, except in conformity with the requirements of this Article.

(b) No person shall demolish a locally designated historic landmark without first obtaining a COA from the Commission and the appropriate permit from the Building Official. Any requests for such demolition permits must be submitted to the Commission and shall be considered by the Commission at its next regularly scheduled meeting, but in any event, within thirty (30) days of submittal. Any application not considered by the Commission within thirty (30) days of submittal shall be deemed approved.

(c) Nothing contained herein shall prevent the demolition of any building or structure which the Building Official shall certify, in writing, to the Commission is required for the public health, safety or welfare because of an unsafe or dangerous condition. (Ord. 2009-13 §3; Ord. 2018-31 §2)

Sec. 16-432. Enforcement.

(a) It is unlawful for any person to violate any of the provisions of this Article or any of the conditions included upon a building permit or COA issued pursuant to this Article.
(b) The City may maintain an action in a court of competent jurisdiction for an injunction or otherwise to enforce compliance with this Article or any conditions issued hereunder.

(c) No building permit shall be granted or issued by the City in violation of any provision of this Article.

(d) The City shall have recourse to any other remedies provided by law. (Ord. 2009-13 §3)
CHAPTER 17

Subdivisions

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ARTICLE I

General Provisions

Sec. 17-21. Short title.

This Chapter shall be known as, and may be cited and referred to as the "Subdivision Ordinance of the City of Black Hawk, Colorado." (Ord. 95-3)

Sec. 17-22. Purpose.

(a) This Chapter is intended to assure efficient circulation, adequate improvements, sufficient open space and basic order in subdivision design by providing for the proper arrangement of streets in relation to other existing or planned streets and in relation to the Comprehensive Plan; for adequate and convenient open spaces, for traffic circulation, utilities, emergency access, recreation, water, waste disposal, schools, fire and police protection, drainage, riparian and wetlands areas, historical or archaeological sites, and light and air; for the avoidance of population congestion; for the establishment of standards for the design and construction of improvements required herein; and the regulation of lot areas and widths.

(b) These regulations are further intended to serve the following specific purposes:

(1) To inform each subdivider of the standards and criteria by which development proposals will be evaluated and to provide information as to the type and extent of improvements required;

(2) To assure landowners that their properties can be subdivided in the future without conflict with development on adjacent land; and

(3) To assure taxpayers that public costs of new development will be minimized through the logical, coordinated extension of municipal utilities and streets. (Ord. 95-3)

Sec. 17-23. Authority.

The ordinance codified herein is adopted pursuant to the authority of the Charter and Section 31-23-214, C.R.S. (Ord. 95-3)

Sec. 17-24. Jurisdiction.

These regulations are applicable within the following described areas:

(1) All land located within the legal boundaries of the City;

(2) All land located within three (3) miles of the corporate limits of the City and not located in any municipality for the purposes of control with reference to major streets only;

(3) Where the land is outside the City boundary and another municipal boundary is within three (3) miles of the City boundary, the application of these regulations shall be governed by the provisions of Section 31-23-213, C.R.S. (Ord. 95-3)

Sec. 17-25. Effective date.

The provisions of the ordinance codified herein were adopted at a public hearing before the Board of Aldermen on March 22, 1995, and became effective on March 29, 1995. (Ord. 95-3)

Sec. 17-26. Development to comply with design standards.

All interpretations and the implementation of these subdivision regulations shall be compatible with the Design Standards for the City of Black Hawk and the Public Works Design and Specification Manual. All applications submitted under this Chapter shall be signed by the applicant and shall certify that the applicant has reviewed this Chapter and the application complies with the requirements of this Chapter. (Ord. 95-3; Ord. 98-59 §3)
Sec. 17-27. Interpretation and application of provisions.

In the interpretation and application of the provisions of these regulations, the following shall govern:

(1) In the interpretation and application, the provisions of these regulations shall be regarded as the minimum requirements for the protection of the public health, safety, comfort, morals, convenience, prosperity and welfare. These regulations shall therefore be regarded as remedial and shall be liberally construed to further their underlying purposes.

(2) Should other regulations or ordinances of the City impose restrictions regarding the same subject matter as addressed by these regulations, the restriction which is most restrictive or imposes the higher standard shall govern.

(3) These regulations shall not abrogate, annul, modify or amend any permit, conditional use permit, special review use permit, license or approval or any modification thereof or amendment thereto issued or authorized by the Board of Aldermen, the United States Forest Service or any other governmental authority having appropriate jurisdiction prior to the effective date hereof.

(4) These subdivision regulations shall be applicable to all developments, subdivisions and lot consolidations except for the following: (a) the construction of a single-family residence on one (1) existing lot or parcel of land; and/or (b) the expansion of any existing, previously approved bed and breakfast, if the structure housing the bed and breakfast is built on or expanded onto one (1) existing lot or parcel. Any and all other subdivisions or lot consolidations shall comply with and adhere to all of the provisions of these subdivision regulations.

(5) Unless otherwise provided herein, those ordinances and regulations, including any amendments to Chapter 16 of this Code or these subdivision regulations, in existence at the time of the issuance of a building permit shall be applicable to the construction and use of a structure on a subdivided or consolidated lot or parcel. (Ord. 95-3; Ord. 98-34 §1)

Sec. 17-28. Control over platting.

(a) All plans of streets or highways for public use, and all plans, plats, plots and replats of land laid out in a subdivision or building lots, and the streets, highways, alleys or other portions of the same intended to be dedicated to a public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall be submitted to the Board of Aldermen for approval before they are recorded. All proposed dedications must have received the approval of the Board of Aldermen and the acceptance thereof noted in written form, duly executed by the Mayor.

(b) No lands shall be subdivided or divided and no subdivision plat shall be approved unless and until one (1) or more streets or roads providing access to the tract of land to be subdivided or divided is either:

(1) Dedicated to the City for public use. The developer shall execute and submit to the Board of Aldermen a guarantee in the form as provided in Subsection 17-64(e) of this Chapter guaranteeing the completion of the proposed roadway within one (1) year from the date the final plat is recorded;

(2) Recognized by the City as a public right-of-way by deed, dedication or prescriptive use, as is a part of the designated City road system and is regularly maintained by the City; or
(3) Dedicated or conveyed to the owners of the subdivision and their successors in title, and constructed to the Public Works Design and Specification Manual, and a property owners' association or other legal entity acceptable to the Board of Aldermen is legally obligated to maintain such road to City standards.

(c) No final plat of a subdivision, minor subdivision plat, vacation or replat of an existing subdivision shall be approved by the Board of Aldermen unless it conforms to the provisions of these subdivision regulations.

(d) The Board of Aldermen shall withhold all public street improvements and public maintenance from all rights-of-way which have not been dedicated to the public and accepted for such purposes by the Board of Aldermen or, if dedicated to the public, which have not been constructed to the Public Works Design and Specification Manual and accepted as such by resolution of the Board of Aldermen.

(e) No building permit or certificate of occupancy shall be issued for any parcel or tract of land which was created by subdivision after the effective date of, and not in conformity with, the provisions of these subdivision regulations and no excavation of land or construction of any public or private improvements shall take place or be commenced except in conformity with the regulations.

(f) Any construction activity of any description which is commenced or maintained upon property of any description prior to the issuance of a building permit or approval of a final plat, or any construction or development activities which are maintained upon any parcel which are in violation of, or otherwise not in compliance with, the terms of these subdivision regulations or the conditions of final plat approval imposed by the Board of Aldermen, shall be subject to any legal or equitable enforcement action by the City, including but not limited to the seeking and issuance of an injunction against further construction or development, until all required permits and plat approvals have been obtained, and/or all construction is being undertaken in compliance with the terms and conditions thereof. In addition, the City is hereby authorized and empowered to withhold temporary and permanent certificates of occupancy in those instances in which construction has been commenced or completed in violation of any of the terms of these subdivision regulations, or any of the terms or conditions of any permits or plat approvals obtained hereunder. (Ord. 95-3; Ord. 98-34 §§2, 3)

Sec. 17-29. Exemptions from these provisions.

(a) Conditions for exemptions. The Board of Aldermen may exempt from the definition of the term subdivision, as provided for in Section 17-42 of this Chapter, any division of land which does not result in the creation of additional buildable or developable lots or parcels, and which:

(1) Is for the purpose of changing the form of ownership of a previously subdivided parcel, provided that change does not alter the overall existing density of the parcel being subdivided. This includes the creation of a security interest in the form of investment trusts, life estates, joint tenants or tenants in common.

(2) Is for the purpose of revising lot lines from those shown on a recorded plat and which creates no more than the recorded number of parcels, subject to one (1) or more of the following conditions:

a. Any lot or parcel created shall conform to the minimum requirements for area or dimension as established by Chapter 16 of this Code or any other related ordinance.
b. If the lots of the original recorded plan were nonconforming, lots or parcels created shall not increase the existing nonconformity.

c. Applicable provisions within these subdivision regulations related to the amendment of recorded plats will be complied with.

(3) Is for the purpose of correcting an engineering or survey error in a recorded plat, provided that the correction or corrections continue to meet the standards of these subdivision regulations and provided that applicable law relating to amendment of recorded plats is complied with.

(4) Creates parcels for government-owned community facilities (including utility land acquisition) provided that the exemption conforms with the policies and regulations of these subdivision regulations.

(5) Is created by order of any court of competent jurisdiction.

(6) Creates cemetery lots.

(7) Creates an interest or interests in oil, gas, minerals or water which are now or hereafter severed from the surface ownership of real property.

(8) Is for the purpose of building a duplex that is permitted in a zone district except that condominiumization or its equivalent shall be considered a subdivision.

(b) Exemptions application procedure. The Board of Aldermen may exempt by resolution from this definition of the term subdivision and division of land if the Board of Aldermen determines that such a division is not within the purpose of Subsection (a) above.

(1) Any person seeking an exemption from the term subdivision shall submit ten (10) copies of the following information to the Planning Director:

a. Disclosure of ownership. The applicant must provide a certificate from a licensed title insurance company or attorney title opinion, which certificate shall set forth the names and addresses of all owners of the property including all mortgages, judgments, liens, easements, contracts and agreements of record in the City which affect the title to such property. The applicant shall provide evidence establishing his or her interest and right to use or deal with the property.

b. A map indicating the location of the parcel or lots for which an exemption is sought, the acreage of each parcel or lot, existing and proposed roads, any areas to be dedicated for public use and any units to be set aside for employee housing, and proposed access to public road.

c. A statement of the nature and purpose of the proposed division.

d. For all exemption applications, the map shall conform to the following drawing requirements:

1. The map shall be prepared and certification to its accuracy made by a registered land surveyor.

2. The surveyor making the map shall certify on the map that it conforms to these subdivision regulations and to all applicable state and federal laws and shall affix his or her name.

(2) The Planning Director shall review the application for compliance with the conditions of this Section and for conformance
of the application with any applicable policies and regulations of these subdivision regulations and Chapter 16 of this Code.

(3) The Planning Director shall distribute the application and all accompanying documents to the Public Works Director. The Public Works Director shall review the proposed subdivision for conformance with adopted City standards and return any comments to the Planning Department. The Planning Director shall make a recommendation to the Board of Aldermen.

(4) The Board of Aldermen shall approve only those applications which it finds to be in conformance with the conditions of this Section and with any other applicable policies and regulations of these subdivision regulations and with all provisions of Chapter 16 of this Code. It is expressly understood that no subdivision shall be approved which is not in compliance with Chapter 16.

(5) If the approval of an exemption is contingent upon the dedication of any areas for public use, the Board of Aldermen may accept the dedication document upon its approval of the exemption and before formal filing of the exemption occurs.

c) Filing of recorded exemptions. If the Board of Aldermen approves an exemption pursuant to this Section, the map of the approved subdivision, the exemption document and any dedication agreement shall be promptly recorded in the office of the County Clerk and Recorder.

d) Denial of exemption applications. If the Board of Aldermen denies an exemption application upon finding that the correction or amendment of an existing recorded subdivision plat would result in a plat which does not meet the standards and regulations of these subdivision regulations, the Board may require that the proposed exemption be submitted for subdivision platting procedures found in Article III of this Chapter. (Ord. 95-3)

Sec. 17-30. Roadway standards.

The City of Black Hawk hereby adopts the "City of Black Hawk Roadway Standards" attached to this Ordinance as Appendix A. The City Clerk shall maintain a copy of the "City of Black Hawk Roadway Standards" at all times, and make the same available for public inspection upon request.

(Ord. 2018-9 §1)

Sects. 17-31—17-40. Reserved.

ARTICLE II

Definitions

Sec. 17-41. Rules of language construction.

For the purpose of these regulations, words used in this Chapter shall be interpreted in accordance with the rules set forth below:

(1) The particular controls the general;

(2) In case of any difference of meaning or implication between the text of these regulations and the captions for each section, the text shall control;

(3) The word shall is always mandatory and not directory. The word may is permissive;

(4) Words used in the present tense include the future, unless the context clearly indicates the contrary; and

(5) Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary.

(Ord. 95-3)
Sec. 17-42. Specific definitions.

When used in these regulations, the following words and phrases shall have the specific meanings as defined in this Section:

_Apartment house_ means any single structure containing three (3) or more individual dwelling units.

_Block_ means a parcel of land bounded on all sides by a street or streets, or some other defining element, such as public property, stream bank or other physical or legal feature.

_Common areas_ are defined in each declaration and include such items as the following: any open spaces, green belts, yards, parking areas or storage spaces, located on the property owned and controlled by the homeowners through the homeowners’ association, but which are not part of individual townhouse lots and all community and commercial facilities or other parts of the property necessary or convenient to the existence, maintenance or safety of all townhouses.

_Common elements_, unless otherwise provided in the declaration or by written consent of all the condominium owners, means: the land or the interest therein on which a building or buildings are located; the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances and exits of such building or buildings; the basements, yards, gardens, parking area and storage spaces; the premises for the lodging of custodians or persons in charge of the property; installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, central air conditioning and incinerating; the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use of such community and commercial facilities as may be provided for in the declaration; and all other parts of the property necessary or convenient to its existence, maintenance, safety or normally in common use.

_Comprehensive Plan_ means the Black Hawk Comprehensive Plan and any amendments or additional elements of such plan.

_Condominium unit_ means an individual air space unit together with the interest in the common elements appurtenant to such unit.

_Declaration_ means an instrument which defines the character, duration, rights, obligations and limitations of condominium ownership.

_Dedication_ means a grant by the owner of a right to use land to the public in general, involving a transfer of property rights, and an acceptance of the dedicated property by the appropriate public agency.

_Disposition_ means a contract of sale resulting in the transfer of equitable title to an interest in subdivided land; an option to purchase an interest in subdivided land; a lease or an assignment of an interest in subdivided land; or any other conveyance of an interest in subdivided land which is not made pursuant to one (1) of the foregoing.

_Disturbed area_ means that area of land to be disturbed or altered in any manner, whether temporary or permanently, as a result of the subdivision of land and the construction of building and improvements thereon. This includes, but is not limited to, temporary and permanent roads, streets and trails, disturbance or removal of vegetation, excavation and the storage of fill materials.

_Drainage and erosion control structures_ means all facilities necessary to control the direction, depth, velocity and volume of wa-
ter flow within a proposed subdivision and
to mitigate the erosion and related water
quality impacts resulting from development.
Such facilities are included within the mean-
ing of the term *public improvements*, as that
term is defined in these regulations.

*Drainage easement* means a grant to the
City of the right to control development of a
drainage right-of-way or an area subject to
periodic flooding.
Dwelling means any building or portion thereof which is used as the private residence or sleeping place of one (1) or more human being, but not including hotels, motels, tourist courts, hospitals or similar uses.

Dwelling unit means one (1) or more rooms in a dwelling designed for permanent occupancy by one (1) family for living purposes and having not more than one (1) kitchen.

Easement means a grant of land by the owner for the specified use of the land to the public in general.

Evidence means any map, table, chart, contract or any other document or testimony prepared or certified by a qualified person to attest to a specific claim or condition, which evidence must be relevant and competent and must support the position maintained by the subdivider.

Family means an individual or two (2) or more persons related by blood or marriage, or a group not exceeding five (5) persons living together as a single housekeeping unit in a dwelling unit.

Final plat means a map and supporting materials of certain described land prepared in accordance with these subdivision regulations as an instrument for recording of real estate interests with the County Clerk and Recorder.

Impervious cover means material placed over the surface of the ground, such as pavement, sidewalks, roofs and driveways, which reduces below natural amounts the infiltration of precipitation into the ground.

Improvements, public means the physical improvements to property made by a subdivider and developer to provide needed public facilities or services, or to protect public health, safety and welfare. These include, but are not limited to: roads, streets, gutters, sidewalks, water, sewer, gas and electric lines, parks, detention and settling ponds, infiltration galleries, sandtraps, grassed waterways, revegetation landscaping, erosion control and other measures, whether temporary or permanent, taken or required to control drainage, prevent erosion and protect water quality.

Individual air space means any enclosed room or rooms occupying all or part of a floor or floors in a building of one (1) or more floors to be used for residential, professional, commercial or industrial purposes.

Lot means a parcel or tract of land intended for transfer of ownership or building development having ten (10) feet minimum access to a public or approved private street.

Mean identifiable high water mark means, in the case of a creek or stream, the waterline at the point of bankfull discharge or the point of the high discharge with a recurrence interval of two (2) years.

Open space means land dedicated to the common use of all residents of a subdivision, condominium or townhouse development which is intended to provide visual openness and recreational uses for that development. Included and excluded uses within dedicated open space are outlined as follows:

- Permitted: uncovered swimming pools; sports fields; pathways; trails; tennis courts; volleyball courts; playgrounds; picnic grounds; shuffleboard; horseshoes; badminton; golf courses; unenclosed basketball courts; ponds; lakes; creeks; pedestrian bridges; gardens; horse corrals (no enclosed stables); patios and gazebos.
b. Not permitted: covered swimming pools; bleachers; driveways; tennis courts (enclosed or covered); racquetball courts; handball courts; bandstands; theaters; club houses; sauna; hot tubs; solid fences; greenhouses and decks **.  

* Includes baseball, soccer, football and rugby  
** Independent of structure and at grade  
*** Connected to structure and at or above grade  

Parking area means a parking space plus that contiguous driving surface adjacent to each parking space necessary to provide ingress and egress to the parking space.

Planning Director means the person charged with the administration and enforcement of this Chapter, or his or her duly authorized representative. In the absence of a Planning Director, the City Manager, or his or her designee, shall be charged with the administration and enforcement of this Chapter.

Preliminary plat means the map, drawing or chart of a proposed subdivision and specified supporting materials drawn and submitted in accordance with the requirements of these regulations, to permit the evaluation of the proposal prior to detailed engineering and design.

Reservation means a legal obligation to keep property free from development for a period of time, not involving any transfer of property rights.

Resubdivision means a change in a map of an approved or recorded subdivision plat as such change affects the density, land use or any street layout on such map or area reserved thereon for public use or any lot line; or if it significantly changes any map or plan legally recorded prior to the adoption of any regulations controlling subdivisions.

Right-of-way means a strip of land occupied or intended to be occupied by a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, trees or for another special use. The usage of the term right-of-way for platting purposes shall mean that every right-of-way hereafter established and shown on a final plat is to be separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions or areas of such lots or parcels. Rights-of-way intended for streets, crosswalks, water mains, sanitary sewers, storm drains, trees or any other use involving maintenance by a public agency shall be dedicated to public use by the make of the plat on which such right-of-way is established.

Site specific commercial development plat means the concurrent subdivision and site development of real property located within any commercial district of the City.

Sketch plan means a map of proposed subdivision drawn and submitted in accordance with the requirements of adopted regulations, to evaluate feasibility and design characteristics at an early stage in the planning.

Street, private means a suitable improved private road as determined by the Board of Aldermen, which provides emergency vehicle access to abutting properties without undue hazard to public property or residents.

Street, public means a way for vehicular traffic, further classified and defined as follows:

Alley means a minor way used primarily for vehicular access to business properties for the making of deliveries.
Arterials mean those roads which provide for interregional travel and are normally given state or federal highway designation.

Drives mean minor ways used primarily for vehicular access to residential or business properties not otherwise abutting on a publicly dedicated or traveled street or road, and may be private easements or rights-of-way.

Local streets mean those streets which provide access to and from dwelling units to other streets within the hierarchy. Through traffic is discouraged on such streets. Typically, local streets are of relatively short length and carry traffic having origin or destination within a development.

Major collectors mean those streets which connect destinations among two (2) or more contiguous planning districts. These streets serve to collect traffic from local streets and minor collectors and carry it to arterial streets or to local traffic generators. These streets are generally two-lane roads with some controlled access as may be required.

Minor collectors mean those streets which facilitate movement within a planning district and include those principal entrance streets to a residential development within a planning district and those streets linking adjacent developments within the same planning district.

Subdivider means any person, developer, individual, partnership, association, corporation, estate, trust or any other group or combination acting as a unit, dividing or proposing to divide land so as to constitute a subdivision as defined in this Section, including any agent of the subdivider.

Subdivision means:

a. The division of a parcel of land into two (2) or more parcels, sites or lots for the purpose, whether immediate or future, of transfer of ownership or building development. The granting of easements, rights-of-way or dedication of land for public use shall not be considered a division of land unless the same is made or granted as a part and parcel of a proposed subdivision.

b. The improvement of one (1) or more parcels of land for residential or commercial structures or groups of structures involving the division or allocation of land for the opening, widening or extension of any street or streets, the division or allocation of land as open spaces for common use by owners, occupants or lease holders.

c. Any parcel of land which is to be used for condominiums, apartments or any other multiple dwelling units, unless such land was previously subdivided and the filing accompanying such subdivision compiled with City regulations applicable to a subdivision of substantially the same density.

Subdivision agreement means an agreement providing for irrevocable letter of credit or cash which the City accepts to secure the actual cost of construction of such public improvements as are required by these subdivision regulations within the subdivision. The subdivision improvements agreement may include any one (1) or a combination of the types of security listed in Subsection 17-64(e).

Subdivision, minor means any subdivision containing not more than four (4) lots or dwelling units having access on an existing
public street, not involving any new street or road or the extension of municipal facilities and not adversely affecting the development of the remainder of the parcel or adjoining property and not in conflict with any provision or portion of the Comprehensive Plan, official map or Chapter 16 of this Code, if such exists, or these regulations. **Minor subdivisions**, as defined herein, shall be exempt from the requirements relating to the submission of a preliminary plat. The subdivider shall submit to the Board of Aldermen, at any regular meeting, fifteen (15) copies of the minor subdivision plat. The plat shall contain any one (1) or all of the items of information required for a plat under Section 17-65, in accordance with requirements to be determined by the Planning Director in individual cases.

Townhouse means a type of ownership which consists of a fee simple interest in an individually deeded lot and dwelling, plus a membership right in a homeowners' association which shall own in fee simple the common areas subject to all rights and duties as provided in the declaration of the homeowner's association. (Ord. 95-3; Ord. 98-5 §4; Ord. 98-34 §§4—6)

**Secs. 17-43—17-60. Reserved.**

**ARTICLE III**

**Platting Procedures and Requirements**

**Sec. 17-61. Summary procedures.**

(a) After the subdivider has reached preliminary conclusions concerning the feasibility and design of his or her proposed subdivision, he or she may prepare and submit a sketch plan as provided below for the approval of the Planning Director as to general layout, density, general location of buildings, parking, snow removal and open space for this proposed subdivision. The purpose of this review is to ensure that the proposed development is in accordance with the City Comprehensive Plan, that adequate utilities and access are available, and to ensure that the property on which the subdivision is proposed is at least apparently suitable for subdivision in the manner contemplated by the subdivider. After the approval, conditional approval or disapproval of the Planning Director, the subdivider or the Planning Director may, at the option of either, refer the sketch plan to the Board of Aldermen.

(b) After the approval of the sketch plan, the subdivider shall prepare a preliminary plat and required supplemental material for presentation to the Board of Aldermen. The purpose of this preliminary review is to check the proposed subdivision against the design standards and improvement requirements and to be sure that the zoning standards have been met. After approval of the preliminary plat, the next step in the process is the final plat.

(c) The final plat, together with required supplemental material, shall be a clear representation of the proposed subdivision. Financial guarantees of completion of required improvements will be necessary before the final plat will receive approval by the Board of Aldermen and be recorded with the County Clerk and Recorder.

(d) Any persons seeking platting approvals pursuant to the provisions of these subdivision regulations are hereby advised that no preliminary approval is final, and no preliminary approval may be relied upon by a subdivider or anyone claiming thereunder, until a final plat is approved by the Board of Aldermen. Specifically, approval in concept of a sketch plan does not mandate approval of either a preliminary plat or a final plat by the Board of Aldermen. In
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addition, approval of a preliminary plat does not mandate approval of a final plat by the Board of Aldermen. (Ord. 95-3; Ord. 98-34 §7)

Sec. 17-62. Sketch plan.

(a) A subdivider may consult with the Planning Director regarding his or her proposed subdivision and may submit a sketch plan of his or her subdivision prior to the submission of the materials required for preliminary plat approval. If the subdivider desires to obtain sketch plan approval, the following items shall be submitted by the subdivider with the sketch plan:

(1) Relevant site characteristics and analyses applicable to the proposed subdivision.

(2) Reports concerning streams, lakes, topography, geology, soils and vegetation.

(3) Reports concerning geological characteristics of the area significantly affecting the land use and determining the impact of such characteristics on the proposed subdivision.

(4) Abandoned mines or mill sites within or adjacent to the proposed development area shall be documented and evaluated in terms of their potential hazards.

(5) A sketch drawing and other documentation showing the proposed layout or plan of development, including the total development area, the total number and types of dwelling units and other buildings, the total area of and location of open space and the location and space for parking and the location of snow storage areas.

(6) A title insurance opinion which indicates the legal ownership of the subject property and that the property is not subject to a quiet title action. When the subdivider is someone other than the legal owner, a letter signed by said owner must be submitted to the Planning Director which authorizes the submission of the sketch plan.

(b) A sketch plan shall be processed as follows:

(1) Ten (10) copies of the sketch plan, together with required supplemental material, shall be presented by the subdivider to the Planning Director and shall be accompanied by the appropriate development fee.

(2) The Planning Director shall complete his or her review of the proposed development within thirty (30) days of the receipt of the sketch plan. After this review, the Board of Aldermen, at the option of the Planning Director or the subdivider, shall discuss with the subdivider any changes deemed advisable in the proposed plan and shall approve, conditionally approve or disapprove the proposed plan. A determination shall be made regarding the subdivision's compliance with the Comprehensive Plan, the availability of utilities and access and the apparent suitability of the site for subdivision. If a sketch plan is presented for Board of Aldermen review, a decision may be delayed until a subsequent meeting date at the discretion of the Board of Aldermen. (Ord. 95-3; Ord. 98-34 §8)

Sec. 17-63. Preliminary plat.

(a) The preliminary plat shall be prepared as follows:

(1) The design shall be in accord with the subdivider's plans for actual development and therefore shall be a true representation of the subdivision which may eventually be recorded as a final plat.
(2) The drawing shall be made at a scale of not less than one inch equals one hundred feet (1" = 100') on a reproducible medium with the dimensions of not more than twenty-four inches by thirty-six inches (24" x 36"), and shall be accompanied by one (1) overall map showing the entire development at a legible scale.

(3) A vicinity map shall be at a scale of not less than one inch equals two thousand feet (1" = 2,000') extending at least two (2) miles beyond the proposed subdivision, showing existing streets and highways, natural drainage courses, municipal and special district boundaries, sites for proposed water and sewage treatment facilities and similar major natural or man-made features of the area. Natural and man-made features shall include existing geological hazard areas, as well as abandoned mining and milling sites. In addition, areas needed for new streets, schools, parks and rezoning should be shown on the vicinity map when appropriate. U.S. Geological Survey topographical maps are acceptable vicinity maps.

(b) The preliminary plat shall contain or be accompanied by the following information:

(1) Proposed name of the subdivision.

(2) Location of the subdivision as part of some larger subdivision or tract of land and by reference to permanent survey monuments with a tie to a section corner, quarter-section corner or sixteenth-section corner.

(3) Names and addresses of the subdivider, the engineer or designer of the subdivision and land surveyor (who shall be licensed by the State Board of Examiners for Engineers and Land Surveyors).

(4) Total acreage of the subdivision and tabulation of acreage in parks, parking, snow storage, open space, commercial land, residential lots, single and multifamily lots and all other uses of the land with their respective percentages of the total area.

(5) Date of preparation, scale and north sign (designated as true north).

(6) Topographic map shall be based on U.S.G.S. datum, U.S.G.S. bench mark locations and elevations provided by the City. Contour intervals shall be five (5) feet. The same interval is to be used throughout the subdivision and must be clearly indicated on the plat. There shall be at least two (2) bench marks on the site which shall not be disturbed during construction. Location, description and elevation of said bench marks shall appear on the plat (maximum error allowed in setting establishing bench marks is: plus one-tenth [\(\frac{1}{10}\) distance in miles). Subdivision or tract of land shall be tied to a section corner, quarter-section corner or sixteenth-section corner.

(7) A storm drainage plan shall be prepared in accordance with the storm drainage provisions of the Public Works Design and Specification Manual. Designation of area subject to periodic flooding and the volume of water during such floods and drainage conditions on the tract; location and extent of watercourses; low areas subject to inundation; perpetual drainage easements; percentage of total site to be developed to impervious cover; and the percentage of total site have a slope of thirty percent (30%) or greater.

(8) Other conditions or features on the tract; natural hazards such as steep slopes, unstable conditions, avalanche areas, rock or landslides, stopes, adits, portals and other evidence of past mining activities, highly erosive soils or other geological hazards, rock outcrops, wooded areas, isolated preserveable trees, existing buildings, walls and other significant features.
(9) Evidence to establish that, if a public sewage disposal system is proposed, provision has been made for such a system, and if other methods of sewage disposal are proposed, evidence that such systems will comply with state and local regulations which are in effect at the time of submission of the preliminary plat or final plat. Where septic tanks and drain fields are used, percolation tests will be taken on every lot; these tests will be submitted to the State Department of Public Health and Environment prior to submitting for final plat approval.

(10) The names of abutting subdivisions and the names and addresses of the owners of abutting property. The zoning on and adjacent to the subdivision. The location and principal dimensions for all existing streets (including names), easements, watercourses and other conditions on adjacent land for the first two hundred (200) feet from the subdivision boundary. The approximate direction and quadrant of ground slope, including any embankments or retaining walls, location and character of nearby land uses and buildings.

(11) Location and principal dimensions for all proposed streets (including names), easements, lot lines and area to be reserved or dedicated for parks, open space, bike paths, pedestrian walkways or other public use.

(12) Utilities on and adjacent to the tract. The location, size and invert elevations of sanitary sewers, storm drainage facilities and water mains. The location of gas lines, electric and telephone lines, fire hydrants and street lights. If water main, sanitary sewer or drainage facilities are not on or adjacent to the tract, the survey may indicate the direction and distance to, and the size and invert elevation of, the nearest extensions of such utilities.

(13) Proposed sites, if any, for multi-family residential use, business areas, industrial areas, churches, schools, parks, open space and other public uses.

(14) Site data, including the number of residential lots and typical lot sizes.

(15) Such additional information as may be required by the Planning Director or Board of Aldermen in order to adequately review the preliminary plat.

(16) When applicable, a draft copy of any proposed restrictive covenants for the subdivision and a draft copy of proposed articles of incorporation and any bylaws of any homeowner's association.

(17) When applicable, total number of square feet of proposed, or potential, non-residential floor space.

(18) Estimated total number of gallons per day of water system requirements where a distribution system is proposed.

(19) Estimated total number of gallons per day of sewage to be treated where a central sewage treatment facility is proposed, or sewage disposal means and suitability where no central sewage treatment facility is proposed.

(20) Estimated construction costs and proposed method of financing of streets and related facilities, water distribution systems, sewage collection systems, storm drainage facilities and such other public improvements and utilities as may be required of the developer by the City.

(21) Adequate evidence that a water supply that is sufficient in terms of quality, quantity and dependability will be available.
to ensure an adequate supply of water for the type of subdivision proposed. Such evidence may include but shall not be limited to:

a. Evidence of ownership or right of acquisition or use of existing and proposed water rights.

b. Historic use and estimated yield of claimed water rights.

c. Amenability of existing rights to a change in use.

d. Evidence that public or private water owners can and will supply water to the proposed subdivision stating the amount of water available for use within the subdivision and the feasibility of extending service to that area.

e. Evidence concerning the potability of the proposed water supply for the subdivision.

(22) Adequate evidence concerning the availability of sufficient sewer treatment capacity to serve the subdivision.

(23) Maps and tables concerning suitability of types of soil in the proposed subdivision.

(24) Detailed plans for cut and fill operations in hillside developments, including slope ratios, methods of compaction, proposed retaining walls and other information deemed necessary by the Board of Aldermen to make a determination as to the acceptability of such operations.

(25) Erosion control plan, including proposed erosion control structures to mitigate erosion and related water quality impacts resulting from the proposed project.

(26) Revegetation plan, indicating revegetation landscape measures for all disturbed areas. The plan must show the area in which all trees are located, based on a survey or aerial photograph; trees intended to be removed; amount and kinds of trees, shrubs and grasses to be used for revegetation and landscaping and the cost to the developer for implementing. The plan shall be considered a public improvement to be guaranteed by a letter of credit or cash and a subdivision agreement.

(27) Evidence that the developer has submitted the information sought to determine what impact the proposed development will have on the surrounding community.

(28) Survey that is certified by a surveyor registered in the State of Colorado that is based upon datum determined by the Public Works Department.

(c) The preliminary plat shall be processed as follows:

(1) Five (5) copies of the preliminary plat, together with required supplemental material and a processing fee to cover the cost of review, shall be presented by the subdivider to the Planning Director at least fifty-five (55) days prior to the date the subdivider desires to submit the preliminary plat to the Board of Aldermen. In addition, sufficient copies of the plat and supplemental material shall be delivered to the Planning Director so as to provide all necessary material for the review agencies as specified by the Board of Aldermen at the time of the approval of the sketch plan, or if not so specified, as specified by the Planning Director.

(2) The subdivider shall obtain letters of evidence from his or her engineer, attorney and one (1) from himself or herself, testifying that his or her subdivision meets all
Supp. 17 requirements of this Chapter, Chapter 16 of this Code, the Public Works Design and Specification Manual, and the Design Standards for the City.

(3) Referral and review requirements. Upon receipt of the complete preliminary plat submission, the Planning Director shall have distributed copies of the plan, which are to be provided by the subdivider, to the following agencies:

   a. County Planning Commission.

   b. City of Central Planning Commission.

   c. Private utility companies (such as electric, gas, ditch companies, telephone and cable television) serving the area.

   d. Black Hawk/Central City Sanitation District.

   e. Departments within the City, including Building, Public Works, Fire and Police.

   f. When appropriate, the State Department of Transportation, U.S. Forest Service, Bureau of Land Management and any other regional, state and federal agencies to be designated by the Board of Aldermen.

   g. The County Assessor's Office.

   h. The Design Review Committee for the City.

   i. Gilpin County School District RE-1.

   j. When applicable, the State Division of Minerals and Geology for review of potential mine hazards.

   k. When applicable, the State Engineer for an opinion regarding material injury to decreed water rights, historic use of and estimated water yield to supply the proposed development, and conditions associated with said water supply. The State Engineer shall consider the cumulative effect of on-lot wells on water rights and existing wells.

   l. Adjacent property owners. When there are over five (5) condominium property owners adjacent to the proposed subdivision, the preliminary plat shall be sent to the condominium homeowners' association president who will be asked to respond to the Planning Director with any comments or concerns. Said copies of the preliminary plat shall be mailed by certified mail to said adjacent property owners.

The agencies named in this Paragraph shall make recommendations within thirty-five (35) days after the mailing by the City or its authorized representative of such plans unless an extension of not more than twenty (20) days is allowed by the Board of Aldermen. Referral agencies will provide the Board of Aldermen with a summary of any capacity or service evaluation study. The summary shall include an explanation of the agency's assumptions regarding available capacity or service. The failure of any agency to respond within thirty-five (35) days or within the period of an extension shall, for the purposes of the hearing on the plan, be deemed an approval of such plan; except that, where such plan involves twenty (20) or more dwelling units, Gilpin County School District RE-1 shall be required to submit within said time limit specific recommendations with respect to the adequacy of school sites and the adequacy of school structures.
(4) The Board of Aldermen shall not be deemed to have received the preliminary plat until such time as all review matters have been disposed of as above provided. The review period referred to herein shall commence upon such preliminary plat being submitted to the Board of Aldermen and not the Planning Director. The preliminary plat shall be reviewed for compliance with these regulations, Chapter 16 of this Code, Design Standards, Public Works Design and Specification Manual and Comprehensive Plan. Due consideration shall be given to the recommendations made by the Planning Director, City departmental review, public agencies and utility companies.

(5) The process for preliminary plat is set forth as follows:

a. The Planning Director will review the referral comments, discuss the concerns with the applicant, prepare a staff report for the Board of Aldermen and notify the applicant of the hearing date and time.

b. The applicant shall be responsible for providing public notice prior to the Board of Aldermen hearing in compliance with the public notice requirements in Section 16-369 of this Code.

c. The Board of Aldermen shall evaluate the preliminary plan, staff report, referral agency comments and public testimony, and shall approve, conditionally approve, continue for additional information or for further study or deny the preliminary plan. The Board of Aldermen's action shall be based on the evidence presented, compliance with the adopted standards, regulations, policies and other guidelines.

d. The Board of Aldermen is authorized to disapprove a preliminary plan if such plan is deemed to not be in conformity with the standards or intent of the regulations described herein and in the Black Hawk Municipal Code, the Zoning Ordinance and City of Black Hawk Master Plan; or is deemed to create significant adverse impacts to the public served by the agencies named in this Section; or if inadequate capacity exists and cannot be reasonably provided or anticipated in facilities provided by the agencies named in this Section to serve the proposed development.

e. If denied by the Board of Aldermen, the submittal of a new application and processing fee shall be required in order to pursue the proposed subdivision. A resubmittal of the preliminary plan application for the same or substantially same request, as determined by the Planning Director, shall not be accepted within one (1) year of such denial. The applicant may appeal the decision of the Planning Director, in writing, to the Board of Aldermen within ten (10) days from the date of the decision.

(6) Approval of the preliminary plat shall be valid for not longer than twelve (12) months, except in the case of an extension granted upon application and for a good cause shown, or, in the case of a staged development plan preliminary plat showing a large, logical development, the period of approval may be valid for up to thirty-six (36) months. This period of time shall be stated by the Board of Aldermen at the time of approval of the staged development preliminary plat. A timetable outline for final plat submission may be incorporated into the statement of requirements. (Ord. 95-3; Ord. 98-5 §5; Ord. 98-34 §§9—15; Ord. 98-59 §4)
Sec. 17-64. Final plat.

(a) At any time within one (1) year after the Board of Aldermen has completed its review of a preliminary plat and has made its report in respect thereto, the subdivider may submit the final plat to the Planning Director, which shall include all or any portion of the geographic area included within the approved preliminary plat.

(b) The final plat shall be processed as follows:

(1) Plats shall be filed with an original and fifteen (15) prints of a proposed final plat together with the original and, when applicable, eight (8) copies of any restrictive covenants and any required supplemental materials, by the subdivider with the Planning Director. Such filings shall be at least two (2) weeks in advance of a regular Board of Aldermen meeting. The final plat shall not be deemed to be submitted to the Board of Aldermen until the first Board of Aldermen date at which the plat is actually tendered to the Board of Aldermen by the subdivider. The plat and accompanying documents shall be accompanied by a development fee.

(2) At a regular meeting, the Board of Aldermen shall review the final plat for conformity with the approved preliminary plat, the statement of requirements and other requirements of these regulations. The Board of Aldermen may refer the final plat to its staff for further review and verification. The Planning Director shall send final plats to public and private utility agencies for them to review utility easement locations. The Board of Aldermen shall endeavor to conclude its review prior to the expiration of thirty (30) days from submission of the final plat to itself as above provided.

(3) The Board of Aldermen shall check the final plat, especially with regard to required improvements and the acceptance of areas dedicated for public use and shall approve or disapprove the final plat. At such meeting the subdivision agreement and all required financial guarantees for completion of the roads and other public improvements shall be provided by the subdivider.

(4) If the subdivision agreement and all guarantees of completion are not submitted and approved by the Board of Aldermen, the plat shall be retained by the Planning Director pending submission of the signed subdivision agreement and the provision of financial guarantees. No final action shall be taken on the final plat by the Board of Aldermen until the signed subdivision agreement and financial guarantees are received by the City.

(5) Following approval of the final plat by the Board of Aldermen and provision of a signed subdivision agreement and all financial guarantees, the Planning Director shall record the final plat, subdivision agreement and when applicable, restrictive covenants in the office of the County Clerk and Recorder. The subdivider shall advance all recording fees and the cost of obtaining two (2) copies of all documents to the Planning Director before the final plat is recorded.

(6) Immediately upon recording the final plat, the Planning Director shall obtain two (2) copies of the final plat and other documents showing all signatures and recording information.

(c) The final plat shall be prepared as follows:

(1) The design shall conform to the preliminary plat and the statement of requirements and, if desired by the subdivider, may constitute only that portion of the approved preliminary plat which is proposed for immediate recording.
(2) The drawing shall be made at a scale of one inch equals one hundred feet (1" = 100') by the use of black ink on Mylar with outer dimensions of twenty-four inches by thirty-six inches (24" x 36"). A high quality, photographically produced Mylar is also acceptable. It shall be accompanied by one (1) overall map showing the entire development at a legible scale. Any improvements needing engineering design, such as drainage requirements, requirements for stabilizing unstable land and sewer and water system requirements, shall be designed by a registered engineer hired by the developer, and such design shall be submitted with the final plat.

(d) The final plat shall contain or be accompanied by the following information, and shall be submitted to the Planning Director at least two (2) weeks prior to the date the subdivider desires to submit the final plat to the Board of Aldermen:

(1) Title, scale, north arrow and the date of preparation.

(2) Legal description of property, together with a complete reference to the book and page of records of the County Clerk and Recorder where the conveyance of the subdivider is recorded. Said legal description to conform to the requirements contained within the section of these regulations pertaining to the preliminary plat.

(3) Primary control points or descriptions and ties to such control points to which all dimensions, angles, bearings and similar data on the plat shall be referred.

(4) Tract boundary lines, right-of-way lines of streets, easements and other rights-of-way and property lines of residential lots and other sites, including any surface mining claims not vacated by the proposed subdivision, with accurate dimensions, bearing or deflection angles, radii, arcs and central angles of all curves with long chord bearings and distances. Error of said survey shall not be greater than one (1) foot in seven thousand (7,000) feet. Proof of accuracy in the form of a copy of computer printout showing unadjusted and adjusted boundary shall accompany final plat.

(5) Names and right-of-way width of each street or other right-of-way.

(6) Location, dimensions and purpose of any easements, including reference by book and page to any pre-existing recorded easements.

(7) Number to identify each lot or site and acreage of each site to nearest one-hundredth (.01) of an acre.

(8) Location, dimensions and legal identification of all buildings and purpose of which sites, other than residential lots, are dedicated or reserved.

(9) A title insurance commitment or attorney's title opinion showing that the subdivider is the owner of all the land to be platted and that all roads, streets, easements and other rights-of-way and all lots, tracts or sites dedicated or to be conveyed for public use, or for common use by all lot owners are free and clear from all liens and encumbrances, including boundary disputes, except patent reservations. If such land is mortgaged by the developer, it shall be sufficient if the mortgagee joins in the dedication.

(10) Statement by owner platting the property and dedicating the streets, right-of-way, easements and any sites for public uses, to be in substantially the following form:

Know all men by these presents: The (owner's name) is the owner of that real property situated in the City of Black Hawk, Gilpin County, Colorado, more
fully described as follows: (legal description) that has caused said real property to be laid out and surveyed as (subdivision name), and does hereby dedicate and set apart all the streets, alleys and other public ways and places shown on the accompanying plat for the use of the public forever, and does hereby grant to the City of Black Hawk use of those portions of said real property which are indicated as easements on the accompanying plat as permanent public easements.

In witness whereof, (owner's name) has caused his name to be hereunto subscribed this ____ day of ________, 20__. 

(OWNER'S SIGNATURE)

State of Colorado )
)
County of Gilpin )

The foregoing instrument was acknowledged before me this ____ day of ________, 20__, by (owner's name).

Witness my hand and official seal.

My commission expires: ____________________.

__________________________
Notary Public

(11) Certification by a surveyor insuring the accuracy of the survey and plat and certifying that he or she has complied with the requirements of Title 38, Article 51, C.R.S., and the requirements of these regulations in the preparation of the final subdivision plat, to be in substantially the following form:

SURVEYOR'S CERTIFICATE

I, (surveyor's name) a duly registered land surveyor in the State of Colorado, do hereby certify that this plat of (subdivision name), truly and correctly represents the results of a survey made by me or under my direction, and that said plat complies with the requirements of Title 38, Article 51, C.R.S., and that the monuments required by said Statute and by the Subdivision Ordinance for the City of Black Hawk have been placed on the ground.

The location of the buildings and other land improvements on this plat do not necessarily represent their final location. The formal location of the buildings and improvements will be identified on the as-built map or improvement survey which must be submitted to the City prior to receiving a Certificate of Occupancy.

This plat is a true and accurate representation of said survey.

(surveyor's signature)

(The stamp and registration number must appear)

State of Colorado )
)
County of Gilpin )

The foregoing instrument was acknowledged before me this ____ day of ________, 20__, by (surveyor's name).

Witness my hand and official seal.

My commission expires: ____________________.

__________________________
Notary Public

(12) A two-by-four-inch (2" x 4") vertical box in the lower right-hand corner shall be provided for use by the County Clerk and Recorder. This box shall be noted For Clerk and Recorder Use Only.

(13) When applicable, the executed original of the restrictive covenants and articles of incorporation and bylaws of any homeowners' association showing filing of the articles in the office of the Colorado Secretary of State.

(14) A vicinity map.

(15) The subdivider shall provide:

a. Storm drainage plans and related designs in order to insure proper drainage ways.

b. Property survey and proof of ownership.
c. Sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems. (Percolation test will be taken on every lot where individual sewage disposal systems are used and the depth of the groundwater table will be indicated.)

d. Road plans and profiles.

e. Plans and locations of any additional structures required by the City.

(16) The subdivider shall provide sites and land areas and parks when such are reasonably necessary to serve the proposed subdivision and the future residents thereof. Such provisions may include:

a. Reservation of such sites and land areas for acquisition by the City.

b. Dedication of land areas to the City, or in lieu thereof, payment of a sum of money not exceeding the full market value of such sites and land areas. Any such sums, when required, shall be held by the Board of Aldermen for the acquisition of said sites and land areas.

c. Dedication of such sites and land areas for the use and benefit of the owners and future owners in the proposed subdivision.

d. All dedications shall be determined and made in compliance with the provisions of Section 17-64 and/or Section 17-65.

(17) No subdivision shall be approved until such data, surveys, analyses, studies, plans and designs as may be required by this Section and by the Board of Aldermen have been submitted, reviewed and found to meet all planning and engineering requirements of the City contained in this Chapter or the Public Works Design and Specification Manual.

(18) The subdivider shall enter into a subdivision improvements agreement binding the subdivision to any public improvements and/or conditions placed on the project by the Board of Aldermen. This agreement shall be signed prior to, and recorded with, the final plat with the County Clerk and Recorder.

(19) The subdivider shall submit to the City written evidence, in the form of a letter of agreement between the subdivider and the utility provider or such other written undertaking as shall be acceptable to the City in its sole discretion, that provision has been made for facility sites, easements and rights of access for electrical and natural gas utility service sufficient to ensure reliable and adequate electric, and, if applicable, natural gas service and sanitation service for the proposed subdivision.

(e) Guarantee of public improvements.

(1) No final plat shall be approved or recorded until the applicant has submitted and the Board of Aldermen has reviewed and accepted a subdivision agreement (or similar performance agreement) that provides for the construction of all required public improvements shown in the final plat documents together with a financial guarantee in the form of an irrevocable letter of credit or cash which is sufficient, in the judgment of the Board of Aldermen, to make reasonable provision for the completion of said improvements in accordance with design and time specifications. The Board of Aldermen may, in its sole discretion, determine by resolution that a performance bond be provided as the financial guarantee in lieu of an irrevocable letter of credit or cash.
(2) The applicant shall provide the City with an itemized estimate of the cost of required improvements on a standardized form available from the Public Works Department in accordance with the requirements of the Public Works Design and Specification Manual. A financial guarantee in the form noted above for one hundred ten percent (110%) of the total cost of the improvements shall be required.

(3) The Public Works Department shall review the subdivision agreement and the cost estimates and recommend changes as necessary to complete the required improvements.

(4) The City Attorney shall review and approve the form of the subdivision agreement which is set forth in Appendix A to the ordinance codified herein, and the form of the financial guarantee. A standardized subdivision agreement form is available from the Planning Department.

(5) The Public Works Department shall monitor all subdivision agreements. Prior to the expiration of the financial guarantee, the Public Works Department shall notify the Board of Aldermen and developer of the expiration date and estimated cost of the outstanding improvements. An extension of the financial guarantee for the cost of the outstanding improvements shall be required.

(6) Upon inspection by the Public Works Department, and upon approval by the Board of Aldermen of the Public Works' recommendation, the Board of Aldermen shall release the financial guarantee as provided in the subdivision agreement at the end of the warranty period. If the Board of Aldermen determines that any improvements are not constructed in substantial compliance with the specifications, it shall furnish the applicant with a list of specific deficiencies and shall withhold collateral sufficient to ensure such compliance. If the Board of Aldermen determines that the applicant has not constructed any or all of the improvements in accordance with all of the specifications, the Board of Aldermen may withdraw and employ from the financial guarantee such funds as may be necessary to construct the improvement in accordance with all of the specifications. A financial guarantee to cover the cost of repair of such improvements is required during the warranty period in accordance with the requirements of the Public Works Design and Specification Manual and applicable standards for other public improvements necessary for the development. (Ord. 95-3; Ord. 98-34 §§16—20; Ord. 98-59 §5; Ord. 2000-19 §1; Ord. 2003-15 §1)

Sec. 17-65. Minor subdivision plat.

(a) A minor subdivision plat allows for the subdivider an opportunity to shorten the time required for platting procedures described in this Chapter. The minor subdivision plat procedure is not intended to circumvent the other requirements found elsewhere in this Chapter. The provisions within this Section may only be applied when the following criteria are met:

(1) The division of land involves the creation of no more than four (4) lots.

(2) Each of the proposed lots created by this procedure has direct access to a public right-of-way. Access shall be a minimum driveway width of ten (10) feet except as required by other ordinances or design standards within the City.

(3) The subdivision of land does not involve the creation of a new right-of-way or an extension of an existing right-of-way intended for access to the proposed lots.
(b) The minor subdivision plat shall be processed in a manner similarly described by the final plat procedure contained within Subsection 17-64(b). There is no requirement for a sketch plan or preliminary plat procedure. The Planning Director may refer the minor subdivision plat to outside agencies for their review and comment. Agencies selected by the Planning Director for this review will have two (2) weeks to respond.

(c) The minor subdivision plat shall be prepared in a similar manner as the final plat described in Subsections 17-64(c) and (d). In addition to the submittal information required in this Section, the following shall also be provided by the applicant:

(1) An inventory description and map of any geological hazards contained on site, including steep slopes, unstable soil conditions, avalanche areas, rock or land slide areas, stopes, adits, portals or other evidence of past mining activities, highly erosive soils, rock outcrops or any other landforms that may be potentially hazardous to future development.

(2) An inventory description and map of wooded areas and trees four (4) inches or more in caliper.

(3) An inventory description and map of existing buildings, walls, fences, retaining walls or any other structural improvement located on the site. (Ord. 95-3)

Sec. 17-66. Site development commercial plat.

(a) A site development commercial plat allows the subdivider an opportunity to shorten the time frame required for the platting procedures described in this Chapter and the site development process described in Section 16-362. The site development commercial plat procedure is not intended to circumvent the other requirements found in this Chapter or Section 16-362. The provisions within this Section may only be applied for the concurrent subdivision and site development of real property that is zoned commercial.

(b) The site development commercial plat shall be prepared and processed in the manner similarly described for a preliminary plat as contained within Section 17-63 and a site development plan as contained in Subsection 16-362; provided, however, that public notice is not required prior to consideration of the site development commercial plat by the Board of Aldermen.

(c) The site development commercial plat shall not be finally approved by the Board of Aldermen until the applicant has submitted and received approval of the guarantee of public improvements as described in Subsection 17-64(e). The site development commercial plat shall not be recorded until the requirements of Subsections 17-64(c) and (d) are satisfied. (Ord. 98-5 §6)

Sec. 17-67. Street plat and easement vacations.

(a) The methods and procedures to effect any and all street plat and easement vacations shall be in compliance with and subject to Section 43-2-301, et seq., C.R.S., together with any amendments thereto, except as provided in Paragraph (e)(2) of this Section.

(b) As used herein the terms street plat and easement shall be deemed to include any and all parcels upon which there has been a legally sufficient dedication to the public use and a legally sufficient acceptance of said dedication by the public or authorized agents, representatives or officials thereof.
(c) Vacation initiated by private landowner.

   (1) The applicant for any street plat or easement vacation shall present a petition requesting such vacation to the Planning Director and signed by the owners of all abutting property whose means of all legal ingress and egress thereto would be affected by such vacation together with sufficient information showing that the parcel sought to be vacated has been dedicated to and accepted by the public in a legally sufficient manner; the names, street, mailing and legal addresses of all abutting or adjacent landowners thereto, or other landowners whose interest therein might be adversely affected by, or who may be interested in, such vacation. The petition shall be accompanied by a map adequately showing the parcel sought to be vacated as well as the property of all landowners herein above described. Ten (10) copies of the petition, together with the map, shall be submitted to the Planning Director.

   (2) Upon receipt of the petition, the Planning Director shall set the matter for discussion at a regular meeting of the Board of Aldermen at least one (1) month thereafter to allow for referrals as indicated below.

   (3) The Planning Director shall refer a copy of the petition, together with the map, to affected governmental agencies, as well as public and private utility concerns for review and written comment within thirty-five (35) days. Such comments shall be advisory only.

   (4) The Planning Director shall cause to be given notice by certified mail, return receipt requested, to all landowners referred to in Paragraph (1) above, and stating:

      a. That a petition to vacate has been submitted to the Board of Aldermen;

      b. The street plat or easement sought to be vacated;

      c. Briefly, the reasons submitted therefor;

      d. The date, time and place of the meeting referred to herein above in Subsection (2).

   (5) At the meeting referred to in Paragraph (2) above, the Board of Aldermen shall consider the merits of the petition to vacate together with the written comments, if any, referred to in Paragraph (3) above, as well as the comments of interested members of the public.

   (6) Thereafter, the Planning Director shall cause to be given public notice by one (1) publication in a legal newspaper not less than thirty (30) days prior to the hearing before the Board of Aldermen. The public notice shall state:

      a. The road or easement proposed to be vacated;

      b. The date, time and place of the hearing before the Board of Aldermen.

   (7) At its hearing, the Board of Aldermen shall consider the merits of the petition to vacate as well as all other material the Aldermen may deem pertinent thereto, including the comment of interested members of the public, and may either approve or disapprove at its sole discretion, by ordinance, the petition to vacate.

(d) Vacation initiated by the City.

   (1) The Public Works Director and the Planning Director shall jointly prepare and submit to the Board of Aldermen a memorandum setting forth all information of the kind and import required in the case of a petition presented pursuant to Paragraph (c)(1) above, together with all accompanying documents.
(2) Thereafter, the said memorandum shall be subject to and processed in accordance with each and every provision set forth herein above in Paragraphs (c)(1) through (c)(7) inclusive.

(e) Conditions of effectiveness.

(1) No approved vacation of any street plat or easement shall be effective unless the following conditions have been met within a reasonable time following approval of the Board of Aldermen of any petition to vacate or memoranda recommending vacation:

a. In the case of a street plat or easement lying upon, abutting or adjacent to unsubdivided land, vacation thereof shall be complete only upon the filing in the office of the County Clerk and Recorder by the Planning Director of the ordinance of the Board of Aldermen approving such vacation and the deed of conveyance of the Board of Aldermen.

b. In the case of a street plat or easement lying upon, abutting or adjacent to subdivided land, vacation thereof shall be complete only upon preparation by the petitioners of the Public Works Director and Planning Director, as the case may be, submission to the Board of Aldermen for approval and requisite signature and filing in the office of the County Clerk and Recorder, of an amended plat or amendment to the plat evidencing such vacation; and of adequate legal sufficient evidence, suitable for recording, in the office of the County Clerk and Recorder, of an agreement for access to the subdivision by all concerned landowners. All materials for recording prepared pursuant hereto shall contain a statement to the effect that they shall not constitute any manner of representation that current subdivision standards have been met.

(2) Vesting of title upon vacation. The City, as a home rule municipality organized under Article XX of the Colorado Constitution, and pursuant to Section 43-2-303, C.R.S., has the authority to adopt the provisions of this Paragraph.

a. Legislative purpose. The Board of Aldermen finds and determines that it is essential that the City develop its own roadway vacation procedures in order to provide increased flexibility to the City in developing its systems of streets, roadways and other public projects in conjunction with the orderly development of the City.

b. Except as provided in Subparagraph c. below, title to a roadway which is vacated by the City shall vest, subject to the same encumbrances, liens, limitations, restrictions and estates as the land to which it accrues, as follows:

1. In the event that a roadway which constitutes the exterior boundary of a subdivision or other tract of land is vacated, title to said roadway shall vest in the owners of the land abutting the vacated roadway to the same extent that the land included within the roadway, at the time the roadway was acquired for public use, was a part of the subdivided land or was a part of the adjacent land.

2. In the event that less than the entire width of a roadway is vacated, title to the vacated portion shall vest in the owners of the land abutting such vacated portion.

3. In the event that a roadway bounded by straight lines is vacated, title to the roadway shall vest in the owners of the abutting land, each
abutting owner taking to the center of the roadway, except as provided in Subparagraphs 1. and 2. above. In the event that the boundary lines of abutting lands do not intersect said roadway at a right angle, the land included within such roadway shall vest as provided in Subparagraph 4. below.

4. In all instances not specifically provided for, title to the vacated roadway shall vest in the owners of the abutting land, each abutting owner taking that portion of the vacated roadway to which his or her land, or any part thereof, is nearest in proximity.

c. The Board of Aldermen is authorized to vest title in a vacated roadway in a manner differently than the manner set forth in Subparagraph b. above if the Board of Aldermen determines that vesting of a vacated roadway to a particular owner is necessary in order to promote the orderly development of the street system of the City. The City may condition the vesting of title to a vacated roadway in a manner it determines to be in the best interests of the citizens of the City.

(f) Vacation of plats.

(1) Any plat or any part of any plat, including surface mining claims and mill sites, may be vacated by the owner of the premises at any time before the sale of any lot therein by a written instrument to which a copy of such plat shall be attached declaring the same to be vacated.

(2) Such an instrument shall be reviewed by the Board of Aldermen in like manner as plats of subdivisions. The Board of Aldermen may reject any such instrument which abridges or destroys any public rights in any of its public uses, improvements, streets or alleys.

(3) Such an instrument shall be executed, acknowledged or approved, and recorded or filed, in like manner as plats of subdivisions; and being duly recorded or filed shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets, alleys and public grounds, and all dedications laid out or described in such plat.

(4) When lots have been sold, the plat may be vacated in the manner herein provided by all the owners of lots in such plat joining in the execution of such writing.

(g) Withdrawal of approval. The Board of Aldermen may withdraw any approval of a plan or plat or require certain corrective measures to be taken following a determination that information provided by the applicant upon which such decision was based is false or inaccurate. The Board of Aldermen shall give written notice to the applicant stating the false or inaccurate information allegedly provided by the applicant and directing the applicant to appear at a hearing before the Board which shall be scheduled not less than ten (10) days and not more than thirty (30) days after notice is given. The Board shall determine at the hearing the nature and extent of alleged false or inaccurate information, and shall for good cause shown, withdraw any approval or require certain corrective measures to be taken or to direct its agents to enter upon the premises and to take corrective measures required by the Board. The cost of such corrective measures shall be assessed against the applicant. This Subsection shall not apply to that portion of real property located within the final plat area that has been sold.

(h) Required compliance with Section 17-68. Whenever the vacation of a street plat or an easement would result in the creation of any new buildable or developable lots, or would result in the creation of an expanded lot which would support the construction of a structure which would require either platting approval or the
making of a dedication, the provisions of Section 17-68 below shall be complied with prior to the approval of the requested street plat or easement vacation. (Ord. 95-3; Ord. 98-5 §7; Ord. 98-34 §§21—27; Ord. 2012-15 §§1, 2)

Sec. 17-68. Public dedications.

(a) Intent. This Section is intended to provide adequate sites for the location of public facilities necessitated by the impacts created by new development. Such sites may be dedicated to the City, special district or homeowners’ association for eventual construction and maintenance. The intent is to require appropriate mitigation in proportion to the impacts being created by new development.

(b) General requirements. The developer shall provide for the construction of, at no cost to the City, all roads adjacent to the area being platted in conformance with the City’s Master Plan, all roads adjacent to publicly dedicated sites, traffic signalization to serve the site, extensions of all utilities to the site, and other public infrastructure as required by the Board of Aldermen. Security needed to ensure such improvements shall be required at the time of final platting as requested by the Board of Aldermen. All park and trail development and facilities shall conform to the standards and criteria as outlined in the City’s Master Plan.

(c) Other public facilities.

(1) For the purpose of mitigating impacts associated with a development, the Board of Aldermen may require the dedication of land for other public facilities including, but not limited to, fire stations, libraries, police substations, City maintenance facilities or similar public purposes which are reasonably related to the demand created by the development. Such requirements shall be based upon requests to the City made by the public agency impacted by the development and the proportionate share of impacts created by the development.

(2) The conveyance of land dedicated for public purposes to the City shall be by warranty deed and the title shall be free and clear of all liens and encumbrances, including real property taxes prorated to the time of conveyance. The subdivider shall provide a title insurance policy in the City’s name and a certified survey at the time of conveyance.

(3) The conveyance of lands or transfer of fees obtained through the City’s dedication requirement for another public entity shall be pursuant to petition to the Board of Aldermen.

(d) Road, street and highway rights-of-way.

(1) For the purpose of implementing the Master Plan, the development shall provide at no cost to the City’s adequate right-of-way for the internal or adjacent road, street or highway according to the classification in the Master Plan and the requirements of the Public Works Design and Specification Manual.

(2) The Board of Aldermen may require reasonable improvements to adjacent roadways in order to mitigate impacts of new subdivision. Such improvements shall be provided at no cost to the City and shall be secured by a subdivision agreement. (Ord. 95-3; Ord. 98-5 §7)

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Building Regulations

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ARTICLE I

International Building Code*

Sec. 18-1. Title.

The provisions of the ordinance codified herein shall be known and cited as the "City of Black Hawk Building Ordinance." (Ord. 2016-4 §1)

Sec. 18-2. Adopted.


(b) The City adopts by reference the following as secondary codes:


(2) International Residential Code for One- and Two-Family Dwellings, 2015 Edition, with certain appendices as hereafter set out (published by the International Code Council, Inc., 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795);

(3) International Mechanical Code, 2015 Edition, with certain appendices as hereafter set out (published by the International Code Council, Inc., 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795);


(8) Uniform Code for the Abatement of Dangerous Buildings, (published by the International Code Council, Inc., 5360 Workman Mill Road, Whittier, CA 90601-2298);


(11) The National Electrical Code, most current edition adopted by the State of Colorado; (published by National Fire Protection Association, One Batterymarch Park, Quincy, MA 02169-7471);

*Editor's note: Ord. 2016-4, §1, adopted Feb. 24, 2016, repealed the former Art. I, §§ 18-1—18-5, and enacted a new Art. I as set out herein. The former article pertained to similar subject matter and derived from Ord. 2013-12 §1; Ord. 2015-4, §§1, 2.
(c) The subject matter of the primary code and the secondary codes contained therein concerns regulations to provide minimum standards to safeguard life or limb, property and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings, structures, plumbing systems and mechanical systems in the City. Unless otherwise noted, the adoption includes all supplements to the codes.

(d) Any land use applications submitted after the effective date of this Article shall conform to the model codes adopted herein. (Ord. 2016-4 §1)

Sec. 18-3. Jurisdiction defined.

(a) Whenever the word jurisdiction is used in the International Building Code, it shall be held to mean that area included within the corporate limits of the City or any area hereafter annexed to the City.

(b) The Board of Appeals provided for in the International Building Code shall be the Board established by the Board of Aldermen to hear appeals relating to the International Building Code. (Ord. 2016-4 §1)

Sec. 18-4. Penalty.

Failure to comply with the terms of the International Building Code or with this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in this Code. For each day, or portion thereof during which any violation continues, a person may be cited for a separate civil infraction. (Ord. 2016-4 §1)

Sec. 18-5. Additions and modifications to adopted codes.

(a) Amendments to the International Building Code.

(1) Section 101.1 of the International Building Code is amended to read as follows:

101.1 Title. These regulations shall be known as the Building Code of the City of Black Hawk, hereinafter referred to as "this code."

(2) Section 101.2.1 of the International Building Code is amended to read as follows:

101.2.1 Appendices. Provisions in the appendices shall not apply unless specifically adopted. The following appendices published by the International Code Council (ICC) are specifically adopted and made part of the Black Hawk Building Code:

1. Appendix Chapter I, Patio Covers

2. Appendix Chapter J, Grading

(3) Section 101.4.4 of the International Building Code is deleted in its entirety.

(4) Section 101.4 of the International Building Code is amended by adding a new Subsection 101.4.7 to read as follows:

101.4.7 Electrical. The provisions of the most current edition of the National Electrical Code enforced by the Colorado State Electrical Board shall apply to the installation of electrical systems, including alterations, repairs, replacements, equipment, appliances, fixtures, fittings and appurtenances thereto.
NOTE: For clarification, when any of the International Codes that are adopted by the City refer to the ICC Electrical Code, the reference shall apply to the "National Electrical Code."

(5) Section 103.2 Appointment. The Building Official shall be appointed by the City Manager of the City of Black Hawk.

(6) Section 105.1.1 Annual Permits of the International Building Code is deleted in its entirety.

(7) Section 105.1.2 Annual Permit Records of the International Building Code is deleted in its entirety.

(8) Section 105.1 Required Permits of the International Building Code is amended by adding Subsections 105.1.3 through 105.1.6:

105.1.3 Building:

1. Any re-roofing project or any roof repair that requires more than 25% of the roof to be replaced.

2. Drywall repairs 4 feet x 8 feet or larger.

3. New ceiling tile system.

105.1.4 Electrical:

1. Any new outlet required for slot machines, wall signs, kitchen or buffet line equipment, or similar.

2. New light fixture.

3. New or rewiring of any circuits; i.e. heating loop pumps, air handler units, power strips or similar.

4. New circuits for elevator cooling fan.

5. Elevator conduit for door access and badge readers.

105.1.5 Mechanical:

1. Removing or installing duct work, exhaust fans damper.

2. Any new gas line.

3. Relocating supply air registers.

105.1.6 Plumbing:

1. New water lines for water coolers, kitchen equipment, or similar.

(9) Section 105.2 Work Exempt from permit of the International Building Code is amended by deleting:

Building:

6. Sidewalks and driveways not more than 30 inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route.

(10) Section 105.2 Work Exempt from permit of the International Building Code is amended by adding:

Building:

14. Replacement of flooring or wall paneling.

15. Gardening or stone replacement.

16. Drywall repairs under 4 feet x 8 feet.

17. Commercial kitchen equipment rebuilt or repair.
Plumbing:

3. Plumbing fixture replacement; toilets, faucets, sinks, etc.

(11) Section 109.2 of the International Building Code is amended to read as follows:

109.2 Schedule of permit fees. On buildings, structures, gas, mechanical, plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the Schedule of Fees of the City of Black Hawk, as adopted by the Board of Aldermen. All permit applications are reviewed by the Building Official.

Exception: Permits for new buildings and structures; fuel gas, mechanical and plumbing systems shall be paid as part of the new construction general permit. All permit applications are reviewed by the Building Official.

(12) Section 109.2 of the International Building Code is amended by adding Subsections 109.2.1 through 109.2.3 to read as follows:

109.2.1 Residential Permit Fees. A permit shall be issued by the Building Official for new construction, rehabilitation, remodeling, additions, accessory buildings or alterations to all residential structures including relocated residential structures; however, no fees for building permit, plan review or use tax shall be required if the residence was constructed prior to 1991 or is located within the Historic Residential (HR) Zoning District, and new construction, rehabilitation, remodeling, relocation, addition or accessory building improvements are made in accordance with the Design Standards of the City of Black Hawk, as adopted by the Board of Aldermen. All permit applications are reviewed by the Building Official.

109.2.2 Restoration and Community Preservation Fund Grant Program Fees. A permit shall be issued by the Building Official for all renovations that are approved by the Board of Aldermen and funded by a Historic Restoration and Community Preservation Fund Grant; however, no permit fees, plan review fees or use tax shall be required regardless of the valuation of the project.

109.2.3 Plan Review Fees. When submittal documents are required by Section 107.1, a nonrefundable plan review fee deposit shall be paid at the time of submitting the submittal documents for plan review. Said plan review fee shall be 65 percent (65%) of the building permit fee per the Schedule of Fees of the City of Black Hawk, as adopted by the Board of Aldermen.

The plan review fees specified in this section are separate fees from the permit fees specified in Section 109.2 and are in addition to the permit fees. When submittal documents are incomplete or changed so as to require additional plan review or when the project involves deferred submittal items as defined in Section 107.3.4.1, an additional plan review fee shall be charged at the rate shown in the Schedule of Fees of the City of Black Hawk, as adopted by the Board of Aldermen.

(13) Section 109.4 of the International Building Code is amended by adding Subsections 109.4.1 and 109.4.1.1 to read as follows:

109.4.1. Investigation. Whenever any work for which a permit is required by this code has been commenced without
first obtaining a permit, a special investigation shall be made by the Building Official, into why a permit was not obtained before a permit may be issued for such work.

109.4.1.1 Investigation Fee. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be charged at the rate shown in the Schedule of Fees of the City of Black Hawk, as adopted by the Board of Aldermen. The minimum investigation fee shall be the same as the minimum fee set forth in the Schedule of Fees of the City of Black Hawk, as adopted by the Board of Aldermen. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

(14) Section 109.6 of the International Building Code is amended to read as follows:

109.6 Fee Refunds. The Building Official may authorize refunding of any fee paid hereunder which was erroneously paid or collected if an audit of the project has been performed and the audit shows that the fees were paid incorrectly. If an owner or owner's representative feels that a fee is erroneously paid or collected, an audit may be required by the Building Official. The audit shall be performed by an auditor selected by the City. The project owner or owner's representative shall pay the cost of the audit.

The Building Official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.

The Building Official shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment.

(15) Chapter I of the International Building Code is amended to read as follows:

Building permit fees shall be as established by the City Council by Resolution.

(16) Section 1608.2 of the International Building Code is amended to read as follows:

1608.2 Ground Snow Loads. The design ground snow load the City of Black Hawk is 55 pounds per square foot.

(17) [Section 1609.3 of the International Building code is amended to read as follows:]

Section 1609.3 Ultimate Design Wind Speed.

Risk Category I, 163 miles per hour (300 year recurrence interval)

Risk Category II, 173 miles per hour (700 year recurrence interval)

Risk Categories III and IV, 188 miles per hour (1700 year recurrence interval)

(Wind speeds based on the most current 2013 Colorado Front Range Gust Map)
Section 1612.3 of the International Building Code is amended to read as follows:

1612.3 Establishment of Flood Hazard Areas. Flood hazard areas in the City of Black Hawk are as established by the Floodplain Information report for North-Clear Creek, Gregory Gulch, Chase Gulch and Four Mile Gulch in the City of Black Hawk prepared for the City of Black Hawk and the Colorado Water Conservation Board by Owen Ayres and Associates Inc., the Flood Insurance Study for the City of Black Hawk and the Colorado Water Conservation Board by Owen Ayres and Associates Inc., the Flood Insurance Study for the City of Black Hawk dated June of 1980 as amended or revised with the accompanying Flood Insurance Rate Map FIRM Panel Number 080076 001 dated, October 16, 1984, and related supporting data along with any revisions thereto. The adopted flood hazard map and supporting data are hereby adopted by reference and declared to be part of this section.

(19) Section 1612.4 of the International Building Code is amended to read as follows:

1612.4 Design and construction. The design and construction of buildings and structures located in flood hazard areas, including flood hazard areas subject to high-velocity wave action, shall be in accordance with Chapter 5 of ASCE 7 and with ASCE 24.

New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

Designs for meeting this requirement must either be certified by a registered Colorado Professional Engineer or architect or meet or exceed the following minimum criteria:

a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than one foot above grade.

c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

Section 1809.5, Item 1 of the International Building Code is amended to read as follows:

1. Extending below the frost line of 48 inches;

Section 3001.1 of the International Building Code is amended to read as follows:

3001.1 Scope. This chapter governs the design, construction, installation, alteration, maintenance, and repair of elevators, escalators, dumbwaiters, wheelchair lifts, and other regulated conveying systems; requires permits therefor; and provides procedures for the inspection and maintenance of such conveyances.

Section 3001.2 of the International Building Code is amended to read as follows:

3001.2 Referenced standards. Except as otherwise provided for in this code, the design, construction, installation, altera-
tion, repair and maintenance of elevators, escalators, dumbwaiters, wheelchair lifts and other regulated conveying systems and their components shall conform to ASME A17.1/CSA B44, ASME A17.3, ASME A90.1, ASME B20.1, ASME A18.1-2008, ASME A17.2-2005, ASME A17.3-2005, ALI ALCTV, ASCE 21 Parts 1, 2, 3, and 4, and ASCE 24 for construction in flood hazard areas established in Section 1612.3. The provisions of the most current editions of these standards as enforced by the Colorado State Department of Labor and Employment Elevator Section shall apply to these regulated conveyances.

(b) Amendments to the International Fire Code.

(1) Section 101.1 of the International Fire Code is amended to read as follows:

101.1 Title. These regulations shall be known as the Fire Code of the City of Black Hawk, hereinafter referred to as "this code".

(2) Section 101.2.1 of the International Fire Code is amended to read as follows:

101.2.1 Appendices. Provisions in the appendices shall not apply unless specifically adopted. The following appendices published by the International Code Council (ICC) and NFPA standards published by the National Fire Protection Association are specifically adopted and made part of the Black Hawk Fire Code:

Appendix B - Fire Flow Requirements for Buildings

Appendix C - Fire Hydrant Locations and Distribution

Appendix D - Fire Department Access Roads

Appendix I - Fire Protection Systems - Noncompliant Conditions

National Fire Protection Association (NFPA) - most current standards

(3) Section 103.2 Division of Fire Prevention, of the International Fire Code is amended to read as follows:

103.2 Appointment. The fire code official shall be appointed by the Black Hawk Fire Chief.

(4) Section 403.12.1 of the International Fire Code is amended by deleting in its entirety Subsections 403.12.1.1 and 403.12.1.2.

(5) Section 403.12.1 of the International Fire Code is amended by adding new Subsections 403.12.1.3 through 403.12.1.7 Required Fire Watch Permit as follows:

403.12.1.3 When required. A fire watch permit shall be required:

1. When required by other sections of this code.

2. When the Fire Code Official deems a condition essential for public safety.

3. When the Fire Code Official determines that conditions may result in a rekindle.

4. When the fire alarm system is off-line or out of service for repairs or maintenance.

5. When the fire suppression system is off-line or out of service for repairs or maintenance.

6. Fire Watch Permits shall be valid for a period not to exceed 24 hours unless otherwise authorized by the fire chief or the fire code official.
403.12.1.4 **Financial responsibility.** The property owner, the tenant or occupant in control of the premises shall be responsible for the cost of providing a fire watch.

403.12.1.5 **Qualifications.** Personnel assigned to fire watch duties shall possess the following minimum qualifications:

1. Shall be at least 18 years of age.
2. Shall be able to speak, read, and understand English.
3. Shall be capable of executing the duties and responsibilities as specified in Section 403.12.1.7.
4. Shall be capable of operating a mobile telephone and/or portable radio.
5. Shall be capable of walking the assigned watch area.

403.12.1.6 **Number and hours.** The Fire Code Official shall specify the number of fire watch personnel required and the hours during which they must be present based on the conditions and size of the facility.

403.12.1.7 **Duties and responsibilities.** Fire watch duties and responsibilities include, but are not limited to the following:

1. Know the address of the facility being watched.
2. Shall be equipped with a mobile telephone that can be used to contact 9-1-1 or a portable radio that can be used to communicate with a constantly attended security/communications center.
3. Continuously make rounds and monitor all assigned areas.
4. Immediately report any sign of smoke, fire or other emergency to 9-1-1 or to the security/communications center.
5. In the event of any sign of fire or smoke shall activate the fire alarm system when the building is equipped with such a system or notify those present to evacuate the building or area.
6. Shall assist with the evacuation of people present in the area.
7. Keep a fire watch log that includes the following information:

   - Identifies the building or area by name and address that is under watch.
   - The date and time each round or tour is completed, plus comments on what was observed.
   - Each entry shall contain the name and signature of the person conducting the watch.
   - Fire watch logs shall be immediately accessible for review by the Fire Code Official. A copy of the fire watch log shall be submitted to the Black Hawk Fire Department, Fire Prevention Division when the watch is concluded.

Fire watch personnel shall not be assigned additional duties during their fire watch tour.
(6) Section 507.5.3 of the International Fire Code is amended by adding new Subsections 507.5.3.1 and 507.5.3.2 Fire Protection Water Supplies as follows:

507.5.3.1 Fire mains. Fire mains and appurtenances shall be sized to accommodate the calculated fire flow but shall not be less than 6 inches (152 mm) in diameter.

507.5.3.2 Dead-end fire mains. Dead-end fire mains shall not be less than 8 inches (203 mm) in diameter unless calculations determine otherwise and authorized by the authority having jurisdiction.

(7) Section 607 Elevator Operation, Maintenance, and Fire Service Keys of the International Fire Code is amended to add Subsection 607.8.1.1 Elevator Switch Keys.

607.8.1.1 Elevator Switch Keys. The key switches required for all elevators in a building shall be operable by the same key. The keys shall comply with the requirements determined by the authority having jurisdiction. There shall be a key for each switch provided. All elevator switch keys shall be kept on the premises in a location specified by the authority having jurisdiction. The keys shall not be accessible to the public.

(8) Section 901.4 of the International Fire Code is amended by adding Subsection 901.4.7 Modifications to read as follows:

Section 901.4.7 Modifications. No person shall remove or modify any fire protection system installed or maintained under the provisions of this code without approval by the Fire Chief or the Fire Code Official.

(9) Section 903.2 of the International Fire Code is amended to read as follows:

Section 903.2 Where required. Approved automatic sprinkler systems in new buildings and structures shall be provided in the locations described in this section. Automatic sprinkler systems shall be provided throughout buildings and structures of the following building groups. Group A-1, Group A-2, Group A-3, Group A-4, Group E, Group F-1, Group F-2, Group H, Group I, Group R-I, Group R-2, Group R-3, Group R-4, Group S-1 and Group S-2 where one of the following conditions exist:

1. The fire area exceeds two thousand five hundred (2,500) square feet;

2. The fire area has an occupant load of one hundred (100) or more; or

3. The fire area is located on a floor area other than the level of exit discharge.

Automatic sprinkler systems shall be provided throughout buildings and structures of the following building groups. Group B and Group M where one of the following conditions exists:

1. The fire area exceeds five thousand (5,000) square feet;

2. The fire area is located more than three (3) stories above grade plane;

3. The combined area of all fire areas on all floors, including any mezzanines, exceeds ten thousand (10,000) square feet; or

4. Occupancies used for the display and sale of upholstered furniture or mattresses exceeds two thousand five hundred (2,500) square feet.
All Group H and I occupancies shall be provided with an approved automatic sprinkler system regardless of size.

Fire sprinkler systems shall meet the requirements of the most current edition of NFPA 13, 13D, or 13R and the requirements of this code.

(10) Sections 903.2.1 through Section 903.2.10.1 of the International Fire Code are deleted in their entirety.

(11) Section 903.2.1 of the International Fire Code is added and reads as follows:

903.2.1 Group A-2 Casino. An automatic sprinkler system shall be provided throughout every building containing Group A-2 Casino occupancy regardless of size. Such sprinkler system shall be provided throughout the entire building including the casino, offices, multipurpose areas, storage areas, parking garages, hotels and other spaces contiguous and accessory to the building.

(12) Section 905.3 of the International Fire Code is amended and reads as follows:

Section 905.3 Required Installations. Standpipe systems shall be installed where required by Sections 905.3.1 through 905.3.6 and in the locations indicated in Sections 905.4, 905.5 and 905.6, Only Class I Standpipe systems with 1½" x 2½" National Hose adaptors as determined by the Authority Having Jurisdiction shall be installed. Standpipe systems are permitted to be combined with automatic sprinkler systems.

(13) Section 905 of the International Fire Code is amended by adding Subsection 905.3.9 to read as follows:

Section 905.3.9 Locking Caps. New standpipes and fire department connec-

tions (FDC's) shall be equipped with locking caps approved by the Authority Having Jurisdiction.

(14) Section 907 of the International Fire Code is amended by adding 907.2.1.3 Group A-2 Casino to read as follows:

Section 907.2.1.3 Group A-2 Casino. An automatic and manual fire alarm system shall be installed in accordance with the most current edition of NFPA 72 and the provisions of this code throughout every building containing a casino regardless of size. Such fire alarm systems shall be provided throughout the casino and in offices, stages, storage areas, parking garages and on each elevator floor landing of a parking garage, hotels and other accessory spaces contiguous and accessory to such casino.

Exception: New parking garages that are protected throughout by an automatic sprinkler system.

(15) Section 907 is amended by deleting Subsection 907.2.1, Exception.

(16) Section 903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire Area.

Exception: Detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with a separate means of egress and their accessory structures shall comply with the International Residential Code.
(c) **Amendments to the International Residential Code.**

(1) Section R101.1 of the International Residential Code is amended to read as follows:

**R101.1 Title.** These regulations shall be known as the Residential Code for One- and Two-family Dwellings of the City of Black Hawk, hereinafter referred to as "this code."

(2) Section R105.1 Required Permits of the International Residential Code is amended by adding Subsections 105.1.1 through 105.1.4:

**R105.1.1 Building:**

1. Any re-roofing project or any roof repair that requires more than 25% of the roof to be replaced.

2. Drywall repairs 4 feet x 8 feet or larger.

**R105.1.2 Electrical:**

1. Any new outlet.

2. Any light fixture in a new location.

3. New or rewiring of any circuits.

**R105.1.3 Mechanical:**

1. Any new gas line.

**R105.1.4 Plumbing:**

1. Any new interior/exterior water lines.

(3) Section R105.2 Work Exempt from Permit of the International Residential Code is amended by deleting:

**Building:**

5. Sidewalks and driveways.

(4) Section R105.2 Work Exempt from Permit of the International Residential Code is amended by adding the following:

**Building:**

11. Gardening or stone replacement.

12. Drywall repairs under 4 feet x 8 feet.

13. Kitchen equipment rebuilt or repair.

**Plumbing:**

3. Plumbing fixture replacement; toilets, faucets, sinks, etc.

(5) Section R202 Definitions of the International Residential Code is amended as follows:

The definition for Bedroom is added to read as:

Bedroom is defined as a habitable space in a building used for sleeping, is directly or indirectly heated and cooled, includes an egress window and closet for storage.

(6) Table R301.2(1) of the International Residential Code is amended by adding design criteria to read as follows:
(7) Section R313 Automatic Fire Sprinkler Systems of the International Residential Code is deleted in its entirety.

(8) Section R321.1 of the International Residential Code is amended to read as follows:

**R321.1 Elevators.** Where provided, passenger elevators, limited-use/limited-application elevators or private residence elevators shall comply with ASME A17.1. The provisions of the most current editions of this standard as enforced by the Colorado State Department of Labor and Employment Elevator Section shall apply to this regulated conveyance.

(9) Section R321.2 of the International Residential Code is amended to read as follows:

**R321.2 Platform lifts.** Where provided, platform lifts shall comply with ASME A18.1. The provisions of the most current editions of this standard as enforced by the Colorado State Department of Labor and Employment Elevator Section shall apply to this regulated conveyance.

(10) Section R326 of the International Residential Code is deleted in its entirety.

(11) Section N1102.4.1.2 of the International Residential Code is deleted in its entirety.

(12) Section N1103.3.3 of the International Residential Code is deleted in its entirety.

(13) Section G2445 of the International Residential Code is deleted in its entirety.

(14) Section P2603.5.1 of the International Residential Code is amended to read as follows:

**P2603.5.1 Sewer Depth.** Building sewers shall be not less than 48 inches (1219 mm) below grade.
(d) **Amendments to the International Mechanical Code.**

(1) Section 101.1 of the International Mechanical Code is amended to read as follows:

**101.1 Title.** These regulations shall be known as the Mechanical Code of the City of Black Hawk, hereinafter referred to as "this code."

(2) Section 106.5.2 of the International Mechanical Code is amended to read as follows:

**106.5.2 Fee schedule.** The fees for mechanical work shall be as shown in the Schedule of Fees of the City of Black Hawk, as adopted by the Board of Aldermen.

(3) Section 106.5.3 of the International Mechanical Code is amended to read as follows:

**106.5.3 Fee refunds.** The code official shall authorize the refunding of fees as follows.

1. The full amount of any fee paid hereunder which was erroneously paid or collected.

2. Not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

3. Not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan review effort has been expended.

The code official shall not authorize the refunding of any fee paid, except upon written application filed by the original permittee not later than 180 days after the date of fee payment.

(4) Section 108.4 of the International Mechanical Code is deleted in its entirety.

(5) Section 108.5 of the International Mechanical Code is amended to read as follows:

**108.5 Stop work orders.** Upon notice from the code official that mechanical work is being done contrary to the provisions of this code or in a dangerous or unsafe manner, such work shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work on the system after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be in violation of this code.

(6) Section 903.3 of the International Mechanical Code is amended to read as follows:

**903.3 Unvented gas log heaters.** An unvented gas log heater shall not be installed in a factory-built fireplace.

(e) **Amendments to the International Plumbing Code.**

(1) Section 101.1 of the International Plumbing Code is amended to read as follows:

**101.1 Title.** These regulations shall be known as the Plumbing Code of the City of Black Hawk, hereinafter referred to as "this code."
Section 106.6.2 of the International Plumbing Code is amended to read as follows:

**106.6.2 Fee schedule.** The fees for plumbing work shall be as shown in the Schedule of Fees of the City of Black Hawk, as adopted by the Board of Aldermen.

Section 106.6.3 of the International Plumbing Code is amended to read as follows:

**106.6.3 Fee refunds.** The code official shall authorize the refunding of fees as follows:

1. The full amount of any fee paid hereunder which was erroneously paid or collected.

2. Not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

3. Not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan review effort has been expended.

The code official shall not authorize the refunding of any fee paid, except upon written application filed by the original permittee not later than 180 days after the date of fee payment.

Section 108.4 of the International Plumbing Code is deleted in its entirety.

Section 108.5 of the International Plumbing Code is amended to read as follows:

**108.5 Stop work orders.** Upon notice from the code official that mechanical work is being done contrary to the provisions of this code or in a dangerous or unsafe manner, such work shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work on the system after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be in violation of this code.

Section 305.4.1 of the International Plumbing Code is amended to read as follows:

**305.4.1 Sewer Depth.** Building sewers shall be not less than 48 inches (1219 mm) below grade.

Section 903.1 of the International Plumbing Code is amended to read as follows:

**903.1 Roof extension.** Open vent pipes that extend through a roof shall be terminated not less than 12 inches (305 mm) above the roof. Where a roof is to be used for assembly or as a promenade, observation deck, sunbathing deck or similar purposes, open vent pipes shall terminate not less than 7 feet (21345 mm) above the roof.

(f) **Amendments to the International Energy Conservation Code.**

Section C101.1 of the International Energy Conservation Code is amended to read as follows:

**C101.1 Title.** The regulations shall be known as the Energy Conservation Code of the City of Black Hawk, hereinafter referred to as "this code."
(2) Section C107 of the International Energy Conservation Code is deleted in its entirety.

(3) Section C501.6 of the International Energy Conservation Code is amended to read as follows:

**C501.6 Historic Building.** No provisions of this code relating to the construction, repair, alteration, restoration and movement of structures, and change of occupancy shall be mandatory for historic buildings.

(4) Section R101.1 of the International Energy Conservation Code is amended to read as follows:

**R101.1 Title.** This code shall be known as the International Energy Conservation Code of the City of Black Hawk and shall be cited as such. It is referred to herein as "this code."

(5) Section R107 of the International Energy Conservation Code is deleted in its entirety.

(6) Section R501.6 of the International Energy Conservation Code is amended to read as follows:

**R501.6 Historic Building.** No provisions of this code relating to the construction, repair, alteration, restoration and movement of structures, and change of occupancy shall be mandatory for historic buildings.

(g) Amendments to the International Existing Building Code.

(1) Section 101.1 of the International Existing Building Code is amended to read as follows:

**101.1 Title.** These regulations shall be known as the Existing Building Code of the City of Black Hawk, hereinafter referred to as "this code."

(2) Section 1401.2 of the International Existing Building Code is amended to read as follows:

**1401.2 Applicability.** These provisions shall not apply to buildings with occupancies in Group H or I-1, I-3 or I-4.

(h) Amendments to the International Fuel Gas Code.

(1) Section 101.1 of the International Fuel Gas Code is amended to read as follows:

**101.1 Title.** These regulations shall be known as the Fuel Gas Code of the City of Black Hawk hereinafter referred to as "this code."

(2) Section 106.6.2 of the International Fuel Gas Code is amended to read as follows:

**106.6.2 Fee schedule.** The fees for mechanical work shall be as shown in the Schedule of Fees of the City of Black Hawk, as adopted by the Board of Aldermen.

(3) Section 106.6.3 of the International Fuel Gas Code is amended to read as follows:

**106.6.3 Fee refunds.** The code official shall authorize the refunding of fees as follows.

1. The full amount of any fee paid hereunder which was erroneously paid or collected.

2. Not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.
3. Not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan review effort has been expended.

The code official shall not authorize the refunding of any fee paid, except upon written application filed by the original permittee not later than 180 days after the date of fee payment.

(4) Section 108.4 of the International Fuel Gas Code is deleted in its entirety.

(5) Section 108.5 of the International Fuel Gas Code is amended to read as follows:

108.5 Stop work orders. Upon notice from the code official that mechanical work is being done contrary to the provisions of this code or in a dangerous or unsafe manner, such work shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner’s agent, or to the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work on the system after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be in violation of this code.

(6) Section 621 of the International Fuel Gas Code is deleted in its entirety.

(i) 1997 Uniform Code for the Abatement of Dangerous Buildings. The 1997 Uniform Code for the Abatement of Dangerous Buildings is adopted in its entirety. (Ord. 2016-4 §1; Ord. 2018-3 §§1, 2; Ord. 2019-3 §1)

Secs. 18-6—18-70. Reserved.

ARTICLE II

National Electrical Code

Sec. 18-71. Title.

The provisions of this Article shall be known and cited as the "City of Black Hawk Electrical Ordinance." (Ord. 94-1 §1)

Sec. 18-72. Adopted.

The National Electrical Code, the most current edition adopted by the Colorado State Electrical Board, Department of Regulatory Agencies, as published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269, is hereby adopted by reference and incorporated into this Article as though fully set forth herein as the electrical code of the City. Except as otherwise provided hereafter, such code is adopted in full, including the outline of contents and index contained therein. (Ord. 94-1 §1; Ord. 96-18 §10; Ord. 2000-7 §5)

Sec. 18-73. Jurisdiction defined.

Whenever the word jurisdiction is used in the National Electrical Code, it shall be held to mean that area included within the corporate limits of the City or any area hereafter annexed to the City. (Ord. 94-1 §1)

Sec. 18-74. Penalty.

Failure to comply with the terms of the National Electrical Code or this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. For each day
or portion thereof during which any violation continues, a person may be cited for a separate civil infraction. (Ord. 94-1 §1)

Secs. 18-75—18-140. Reserved.

ARTICLE III

Historic Building Rehabilitation

Sec. 18-141. Title.

The provisions of the ordinance codified herein shall be known and cited as the "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings Ordinance." (Ord. 91-21 §1)

Sec. 18-142. Adopted.

The Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, as published by the U.S. Government Printing Office, Washington, D.C., 20462, is hereby adopted by reference and incorporated into this Article as though fully set forth herein as the Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings of the City. Except as otherwise provided hereafter, such standards and guidelines are adopted in full, including the outline of contents, index and appendices contained therein. (Ord. 91-21 §1)

Sec. 18-143. Jurisdiction defined.

Whenever the word jurisdiction is used in the Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, it shall be held to mean that area included within the corporate limits of the City or any area hereafter annexed to the City. (Ord. 91-21 §1)

Sec. 18-144. Penalty.

Failure to comply with the terms of the Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings or this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. For each day or portion thereof during which any violation continues, a person may be cited for a separate civil infraction. (Ord. 94-1 §1)

Secs. 18-145—18-160. Reserved.

ARTICLE IV

Design Standards Guidelines

Sec. 18-161. Title.

The provisions of the ordinance codified herein shall be known and cited as the "Design Standards for the City of Black Hawk." (Ord. 94-12 §2)

Sec. 18-162. Design standards adopted.

The Design Standards for the City of Black Hawk, 1994 edition, is hereby adopted by reference and incorporated into this Article as though fully set forth herein as the Design Standards for the City of Black Hawk. Except as otherwise provided hereafter, such Standards are adopted in full. (Ord. 94-12 §2)

Sec. 18-163. Jurisdiction defined.

Whenever the word jurisdiction is used in the Design Standards for the City of Black Hawk, it shall be held to mean that area included within the corporate limits of the City or any area hereafter annexed to the City. (Ord. 94-12 §2)

Sec. 18-164. Penalty.

Failure to comply with the terms of the Architectural Design Review Guidelines or this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty
as set forth in Section 1-74 of this Code. For each day or portion thereof during which any violation continues, a person may be cited for a separate civil infraction. (Ord. 94-1 §1)

Secs. 18-165—18-180. Reserved.

ARTICLE V

Construction Activity

Sec. 18-181. Construction activity shall cease during specified hours.

(a) Construction activity means any activity undertaken to build upon, refurbish, renovate or excavate any real property or the improvements thereon. Construction activity does not include ordinary deliveries to businesses with a certificate of occupancy.
(b) Construction activity may be performed within the City Monday through Sunday between the hours of 7:00 a.m. and 9:00 p.m. Construction activity involving excavation and blasting in which a site plan or permit is required under Articles VII and VIII of this Chapter may be performed between the hours of 7:00 a.m. and 7:00 p.m., Monday through Thursday, and between the hours of 7:00 a.m. and 1:00 p.m. Friday through Sunday, unless authorized by the City Manager or the City Manager's designee. Excavation and blasting is prohibited except during the times specified above. Nothing in this Subsection (b) shall be deemed to authorize construction activity not involving excavation or blasting to disturb the peace and tranquility of residents and visitors based on excessive noise of said activities at unreasonable times within the meaning of Section 10-130 of this Code. (Ord. 94-4 §1; Ord. 96-17 §1; Ord. 99-28 §3; Ord. 2005-14 §1)

Sec. 18-182. Provision contained in newly issued building permits.

All building permits issued after the effective date of the ordinance codified herein shall contain a provision informing the recipient that all construction activities performed under the permit shall cease between the hours set forth in Section 18-181 above, and all construction vehicles or equipment shall cease operating on City or state highway rights-of-way for the purpose of performing deliveries for construction activity within the City limits from 1:00 p.m. Friday to 7:00 a.m. Monday, or between the hours of 7:00 p.m. and 7:00 a.m. on any weekday. (Ord. 92-15 §3; Ord. 2005-14 §2)

Sec. 18-183. Exceptions.

The prohibition contained in Section 18-181 above shall not apply to construction activity performed in the interior of a structure, provided that such construction activity is inaudible at a distance of one hundred (100) feet from the outside of the structure, or otherwise does not rise to a level that the activity disturbs the peace and tranquility of residents and visitors. The prohibition contained in Section 18-181 may be modified on a case-by-case basis where the construction activity is directly related to a public facility and the prohibition contained in Section 18-181 is modified only to the extent that the modification is necessary to minimize the impact to public health, safety and welfare as determined by the City Manager. Any modification of the prohibition contained in Section 18-181 may contain such conditions as the City Manager deems necessary to eliminate, or to the extent practicable, reduce the harm that this Section was intended to prevent. In the event the City Manager determines that a modification is necessary under Section 18-181, the City shall provide at least forty-eight (48) hours' advance notice to affected property owners, except in the event of an emergency. (Ord. 92-15 §4; Ord. 94-13 §1)

Sec. 18-184. Construction deliveries.

(a) No construction vehicles or equipment shall operate or be present on City or state highway rights-of-way for the purpose of performing deliveries for construction activity within the City limits from 1:00 p.m. Friday to 7:00 a.m. Monday, or between the hours of 7:00 p.m. and 7:00 a.m. on any weekday.

(b) The City Manager or designee, at his or her sole discretion, may grant a written exemption to the construction delivery hours set forth in this Section. The request for exemption shall be submitted to the City Manager at least seventy-two (72) hours in advance of the desired exemption. The exemption may include such conditions as the City Manager or designee deems necessary to eliminate, or to the extent practicable, reduce the harm that this Article was intended to prevent. If the City Manager or designee determines that an exemption is necessary, the City shall provide at least forty-eight (48) hours' advance notice to property owners that may be affected as determined by the City Manager or designee except in the event of an emergency.

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emergency. The City Manager or designee may revoke or amend any exemption granted pursuant to this Section at any time.

(c) The general prohibition contained in Section 10-25 of this Code shall not apply to any written exemption granted by the City Manager pursuant to this Section. (Ord. 99-28 §2)

Sec. 18-185. Penalty.

Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. For each day or portion thereof during which any violation continues, a person may be cited for a separate civil infraction. The penalties specified in this Section shall be cumulative and nothing shall be construed as either prohibiting or limiting the City from pursuing such other remedies or penalties in an action at law or equity. (Ord. 94-1 §1; Ord. 99-28 §1)

Secs. 18-186—18-200. Reserved.

ARTICLE VI

Flood Damage Prevention*

Sec. 18-201. Findings of fact.

(a) The flood hazard areas of the City are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.

(b) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage. (Ord. 2013-49 §1)

Sec. 18-202. Statement of purpose.

It is the purpose of this Article to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(1) Protect human life and health;

(2) Minimize expenditure of public money for costly flood-control projects;

(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) Minimize prolonged business interruptions;

(5) Minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;

(6) Help maintain a stable tax base by providing for the second use and development of flood-prone areas in such a manner as to minimize future flood-blight areas; and

(7) Ensure that potential buyers are notified that property is in a flood area. (Ord. 2013-49 §1)
Sec. 18-203. Methods of reducing flood losses.

In order to accomplish its purposes, this Article uses the following methods:

1. Restrict or prohibit uses that are dangerous to health, safety or property in times of flood or cause excessive increases in flood heights or velocities;

2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

3. Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters;

4. Control filling, grading, dredging and other development which may increase flood damage; and

5. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas. (Ord. 2013-49 §1)

Sec. 18-204. Definitions.

Unless specifically defined below, words or phrases used in this Article shall be interpreted to give them the meanings they have in common usage and to give this Article its most reasonable application.

**Alluvial fan flooding** means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows, active processes of erosion, sediment transport and deposition and unpredictable flow paths.

**Area of shallow flooding** means a designated AO, AH or VO zone on the City's flood insurance rate map (FIRM) with a one-percent chance or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Area of special flood hazard** is the land in the floodplain within the City subject to a one-percent or greater chance of flooding in any given year. The area may be designated as Zone A on the flood hazard boundary map (FHB). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A may be refined into Zones A, AE, AH, AO, A1-99, VO, VI-30, VE and/or V.

**Base flood elevation** means the elevation shown on a FEMA flood insurance rate map for Zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/OA, VI-V30, and VE that indicates the water surface elevation resulting from a flood that has a one-percent chance of equaling or exceeding that level in any given year.

**Basement** means any area of the building having its floor subgrade (below ground level) on all sides.

**Conditional letter of map revision (CLOMR)** means FEMA's comment on a proposed project, which does not revise an effective floodplain map that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodplain.

**Critical facility** means a structure or related infrastructure, but not the land on which it is situated, as specified in Article VI, Section B [18-217(7)], that if flooded may result in significant hazards to public health and
safety or interrupt essential services and operations for the community at any time before, during and after a flood.

Development means any man-made change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated building means, for insurance purposes, a nonbasement building which has its lowest floor raised above ground level by foundation walls, shear walls, posts, piers, pilings or columns.

Existing construction means for the purposes of determining rates, structures for which the start of construction commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. Existing construction may also be referred to as existing structures.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by the City.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

a. The overflow of inland or tidal waters; or

b. The unusual and rapid accumulation or runoff of surface waters from any source.

Flood insurance rate map (FIRM) means the official map of the City on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the City.

Flood insurance study means the official report provided by the Federal Emergency Management Agency. The report contains flood profiles and water surface elevation of the base flood, as well as the flood insurance rate map.

Flood protection system means those physical structural works for which funds have been authorized, appropriated and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within the City subject to a special flood hazard and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood-modifying works are those constructed in conformance with sound engineering standards.

Floodplain or flood-prone area means any land area susceptible to being inundated by water from any source (see definition of flooding).

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such State
or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**Floodproofing** means any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**Floodway (regulatory floodway)** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**Highest adjacent grade** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Historic structure** means any structure that is:

a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

c. Individually listed on the Colorado State Register of Historic Properties; or

d. Individually listed on the City's inventory of historic places and/or is more than fifty (50) years old.

**Letter of map revision (LOMR)** means FEMA's official revision of an effective flood insurance rate map (FIRM), or flood boundary and floodway map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations (BFEs), or the special flood hazard area (SFHA).

**Letter of map revision based on fill (LOMR-F)** means FEMA's modification of the special flood hazard area (SFHA) shown on the flood insurance rate map (FIRM) based on the placement of fill outside the existing regulatory floodway.

**Levee** means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

**Levee system** means a flood-protection system which consists of a levee or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**Lowest floor** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable
nonelevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

*Manufactured home* means a structure that is transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term *manufactured home* does not include a recreational vehicle.

*Manufactured home park or subdivision* means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

*Mean sea level* means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on the City's flood insurance rate map are referenced.

*New construction* means, for the purpose of determining insurance rates, structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which the start of construction commenced on or after the effective date of the ordinance codified herein and includes any subsequent improvements to such structures.

*New manufactured home park or subdivision* means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the City.

*Recreational vehicle* means a vehicle which is:

a. Built on a single chassis;

b. Four hundred (400) square feet or less when measured at the largest horizontal projections;

c. Designed to be self-propelled or permanently towable by a light-duty truck; and

d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

*Start of construction* includes substantial improvement and means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within one hundred eighty (180) days of the permit date. The *actual start* means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. *Permanent construction* does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the *actual start of construction* means the first alteration of any
wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, including a gas or liquid storage tank, that is principally aboveground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, repair, rehabilitation, restoration, addition or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before start of construction of the improvement. This includes structures that have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

a. Any project for improvement of a structure to correct existing violations of State or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions; or

b. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Variance is a grant of relief to a person from the requirement of this Article when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this Article.

Violation means the failure of a structure or other development to be fully compliant with the City's floodplain management regulations. A structure or other development without the elevation certificate, other certifications or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4) or (e)(5) of the National Flood Insurance Program regulations is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Sec. 18-205. Lands to which this Article applies.

This Article shall apply to all areas of special flood hazard and areas removed from the floodplain by the issuance of a FEMA letter of map revision based on fill (LOMR-F) within the City.

Sec. 18-206. Basis for establishing areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for the City of Black Hawk," dated April 16, 1984, with accompanying flood insurance rate maps (FIRM) and any revisions thereto are hereby adopted by reference and declared to be a part of this Article. Community Planning and Development Department shall keep a copy of the flood insurance study (FIS), DFIRMs, and/or FIRMs on file and available for public inspection.

Sec. 18-207. Establishment of development permit.

A development permit shall be obtained before construction or development begins within
any area of special flood hazard established in Section 18-206 above. Application for a development permit shall be made on forms furnished by the Building Inspector and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage materials and drainage facilities; and the location of the foregoing. Specifically, the following information is required:

(1) Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;

(2) Elevation in relation to mean sea level to which any structure has been floodproofed;

(3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Paragraph 18-217(2) of this Article; and

(4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. (Ord. 2013-49 §1)

Sec. 18-208. Compliance.

No structure or land shall hereafter be located, altered or have its use changed without full compliance with the terms of this Article and other applicable regulations. (Ord. 2013-49 §1)

Sec. 18-209. Abrogation and greater restrictions.

This Article is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this Article and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 2013-49 §1)

Sec. 18-210. Interpretation.

In the interpretation and application of this Article, all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the governing body; and

(3) Deemed neither to limit nor repeal any other powers granted under State statutes. (Ord. 2013-49 §1)

Sec. 18-211. Warning and disclaimer of liability.

The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur, and flood heights may be increased by man-made or natural causes. This Article does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of the City or any official or employee thereof for any flood damages that result from reliance on this Article or any administrative decision lawfully made thereunder. (Ord. 2013-49 §1)

Sec. 18-212. Designation of Building Inspector.

The Building Inspector is hereby appointed to administer and implement the provisions of this Article by granting or denying development permit applications in accordance with its provisions. (Ord. 2013-49 §1)
Sec. 18-213. Duties and responsibilities of Building Inspector.

The duties and responsibilities of the Building Inspector shall include, but not be limited to, the following:

1. Maintain and hold open for public inspection all records pertaining to the provisions of this Article in accordance with the Colorado Open Records Act.

2. Review permit application to determine whether proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.

3. Review, approve or deny all applications for development permits required by the adoption of this Article.

4. Review permits for proposed development to assure that all necessary permits have been obtained from those federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334) from which prior approval is required.

5. Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Building Inspector shall make the necessary interpretation.

6. Notify, in riverine situations, adjacent communities and the State coordinating agency which is the Colorado Water Conservation Board, 1313 Sherman Street #721, Denver, Colorado 80203, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

7. Assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.

8. When base flood elevation data has not been provided in accordance with Section 18-206 of this Article, the Building Inspector shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, State or other source, in order to administer the provisions of Sections 18-216 through 18-221 below.

9. When a regulatory floodway has not been designated, the Building Inspector must require that no new construction, substantial improvements or other development (including fill) shall be permitted within Zones A1-30 and AE on the City’s FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one-half (1/2) foot at any point within the City.

(Ord. 2013-49 §1)

Sec. 18-214. Permit procedures.

(a) An application for a development permit shall be presented to the Building Inspector on forms furnished by him or her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

1. Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures;
(2) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;

(3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Paragraph 18-217(2) below;

(4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and

(5) Maintain a record of all such information in accordance with Paragraph 18-213(1) above.

(b) Approval or denial of a development permit by the Building Inspector shall be based on all of the provisions of this Article and the following relevant factors:

(1) The danger to life and property due to flooding or erosion damage;

(2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(3) The danger that materials may be swept onto other lands to the injury of others;

(4) The compatibility of the proposed use with existing and anticipated development;

(5) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(6) The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges, and public utilities and facilities, such as sewer, gas, electrical and water systems;

(7) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;

(8) The necessity to the facility of a waterfront location, where applicable;

(9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use; and

(10) The relationship of the proposed use to the comprehensive plan for that area.

(Ord. 2013-49 §1)

Sec. 18-215. Variance procedures.

(a) The Board of Aldermen, as established by the Home Rule Charter of the City of Black Hawk, shall hear and render judgment on requests for variances from the requirements of this Article.

(b) The Board of Aldermen shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision or determination made by the Building Inspector in the enforcement or administration of this Article.

(c) Any person or persons aggrieved by the decision of the Board of Aldermen may appeal such decision in a court of competent jurisdiction.

(d) The Building Inspector shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(e) Variances may be issued for the reconstruction, repair, rehabilitation or restoration of structures listed on the National Register of
Historic Places or the Colorado State Register of Historic Properties and/or as defined as a historic structure, without regard to the procedures set forth in the remainder of this Article.

(f) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half ($1/2$) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that the relevant factors in Subsection 18-214(b) above have been fully considered. As the lot size increases beyond the one-half ($1/2$) acre, the technical justification required for issuing the variance increases.

(g) Upon consideration of the factors noted above and the intent of this Article, the Board of Aldermen may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Article as set forth in Section 18-202 of this Article.

(h) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(i) Variances may be issued for the reconstruction, repair, rehabilitation or restoration of historic structures upon a determination that the proposed reconstruction, repair, rehabilitation or restoration will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(j) Prerequisites for granting variances:

(1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(2) Variances shall only be issued upon:

   a. Showing a good and sufficient cause;

   b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

   c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

(3) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(k) Variances may be issued by the City for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:

(1) The criteria outlined in Subsections (a) through (i) above are met; and

(2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety. (Ord. 2013-49 §1)

Sec. 18-216. General standards.

In all areas of special flood hazards, the following provisions are required for all new construction and substantial improvements:

(1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of
the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

(3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

(4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters;

(7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and

(8) When a regulatory floodway has not been designated, the Building Inspector must require that no new construction, substantial improvements or other development (including fill) shall be permitted within Zones A1-30 and AE on the City’s FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one-half \(\frac{1}{2}\) foot at any point within the City. (Ord. 2013-49 §1)

Sec. 18-217. Specific standards.

In all areas of special flood hazard where base flood elevation data has been provided as set forth in Section 18-206, Paragraph 18-213(8) or Paragraph 18-218(c) of this Article, the following provisions are required:

(1) Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation. A registered professional engineer, architect or land surveyor shall submit a certification to the Building Inspector that the standard of this Paragraph is satisfied.

(2) Nonresidential construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to at least one (1) foot above the base flood level or, together with attendant utility and sanitary facilities, be designed so that below one (1) foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this Paragraph. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Building Inspector.
Enclosures. New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

a. A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided;

b. The bottom of all openings shall be no higher than one (1) foot above grade; and

c. Openings may be equipped with screens, louvers, valves or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

Manufactured homes.

a. Manufactured homes that are placed or substantially improved within Zones A1-30, AH and AE on the City's FIRM on sites:

1. Outside of a manufactured home park or subdivision;

2. In a new manufactured home park or subdivision;

3. In an expansion to an existing manufactured home park or subdivision; or

4. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as a result of a flood, shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to at least one (1) foot above the base flood elevation and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

c. Manufactured homes placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE on the City's FIRM that are not subject to the provisions of Subparagraphs a. and b. above shall be elevated so that either:

1. The lowest floor of the manufactured home is at least one (1) foot above the base flood elevation; or

2. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and be securely anchored.
to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(5) Recreational vehicles. Recreational vehicles placed on sites within Zones A1-30, AH and AE on the City's FIRM shall either:

a. Be on the site for fewer than one hundred eighty (180) consecutive days;

b. Be fully licensed and ready for highway use; or

c. Meet the permit requirements of Paragraph 18-214(1) of this Article and the elevation and anchoring requirements for manufactured homes in Paragraph (4) above. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect-type utilities and security devices and has no permanently attached additions.

(6) Properties removed from the floodplain by fill. A floodplain development permit shall not be issued for the construction of a new structure or addition to an existing structure on a property removed from the floodplain by the issuance of a FEMA letter of map revision based on fill (LOMR-F), unless such new structure or addition complies with the following:

a. Residential construction. The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to one (1) foot above the base flood elevation that existed prior to the placement of fill, or together with attendant utility and sanitary facilities be designed so that the structure or addition is watertight to at least one (1) foot above the base flood level that existed prior to the placement of fill with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(7) Standards for critical facilities. A critical facility is a structure or related infrastructure, but not the land on which it is situated, as specified in Rule 6 of the Rules and Regulations for Regulatory Floodplains in Colorado, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood.

a. Classification of critical facilities. It is the responsibility of the City of Black Hawk to identify and confirm that specific structures in their community meet the following criteria:

Critical facilities are classified under the following categories: a. essential services; b. hazardous materials; c. at-risk populations; and d. vital to restoring normal services.

1. Essential services facilities include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities, and transportation lifelines.

2. These facilities consist of: public safety (police stations, fire and rescue stations, emergency vehicle and equipment storage, and, emergency operation centers);
3. Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions, and non-ambulatory surgical structures but excluding clinics, doctors’ offices, and non-urgent care medical structures that do not provide these functions);

4. Designated emergency shelters;

5. Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio, and other emergency warning systems, but excluding towers, poles, lines, cables, and conduits);

6. Air transportation lifelines (airports (municipal and larger), helicopter pads and structures serving emergency functions, and associated infrastructure (aviation control towers, air traffic control centers, and emergency equipment aircraft hangars)).

Specific exemptions to this category include wastewater treatment plants (WWTP), non-potable water treatment and distribution systems, and hydroelectric power generating plants and related appurtenances.

Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the City of Black Hawk that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same utility or available through an intergovernmental agreement or other contract) and connected, the alternative facilities are either located outside of the one hundred (100) year floodplain or are compliant with the provisions of this Article, and an operations plan is in effect that states how redundant systems will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the City of Black Hawk on an as-needed basis upon request.

b. Hazardous materials facilities include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials.

These facilities may include:

1. Chemical and pharmaceutical plants (chemical plant, pharmaceutical manufacturing);

2. Laboratories containing highly volatile, flammable, explosive, toxic and/or water-reactive materials;

3. Refineries;

4. Hazardous waste storage and disposal sites; and

5. Above ground gasoline or propane storage or sales centers.

Facilities shall be determined to be critical facilities if they produce or store materials in excess of threshold limits. If the owner of a facility is required by the Occupational Safety and Health Administration (OSHA) to keep a material safety data sheet (MSDS) on file for any chemicals stored or used in the work place, and the chemical(s) is stored in quantities equal to or greater than the threshold planning quantity (TPQ) for that chemical, then that facility shall be considered to be a critical facility. The TPQ for these chemicals is: either five hundred (500) pounds or the TPQ listed (whichever is lower) for the three hundred fifty-six (356) chemi-
cals listed under 40 C.F.R. § 302 (2010), also known as extremely hazardous substances (EHS); or ten thousand (10,000) pounds for any other chemical. This threshold is consistent with the requirements for reportable chemicals established by the Colorado Department of Health and Environment. OSHA requirements for MSDS can be found in 29 C.F.R. § 1910 (2010). The Environmental Protection Agency (EPA) regulation "Designation, Reportable Quantities, and Notification," 40 C.F.R. § 302 (2010) and OSHA regulation "Occupational Safety and Health Standards," 29 C.F.R. § 1910 (2010) are incorporated herein by reference and include the regulations in existence at the time of the promulgation [of] this Article, but exclude later amendments to or editions of the regulations.

Specific exemptions to this category include:

1. Finished consumer products within retail centers and households containing hazardous materials intended for household use, and agricultural products intended for agricultural use.

2. Buildings and other structures containing hazardous materials for which it can be demonstrated to the satisfaction of the local authority having jurisdiction by hazard assessment and certification by a qualified professional (as determined by the local jurisdiction having land use authority) that a release of the subject hazardous material does not pose a major threat to the public.

3. Pharmaceutical sales, use, storage, and distribution centers that do not manufacture pharmaceutical products.

These exemptions shall not apply to buildings or other structures that also function as critical facilities under another category outlined in this Article.

c. At-risk population facilities include medical care, congregate care, and schools.

These facilities consist of:

1. Elder care (nursing homes);

2. Congregate care serving twelve (12) or more individuals (day care and assisted living);

3. Public and private schools (pre-schools, K-12 schools), before-school and after-school care serving twelve (12) or more children);

d. Facilities vital to restoring normal services including government operations.

These facilities consist of:

1. Essential government operations (public records, courts, jails, building permitting and inspection services, community administration and management, maintenance and equipment centers);

2. Essential structures for public colleges and universities (dormitories, offices, and classrooms only).

These facilities may be exempted if it is demonstrated to the City of Black Hawk that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same entity or available through an intergovernmental agreement or other contract), the alternative facilities are either located outside of the one hundred
e. Protection for critical facilities. All new and substantially improved critical facilities and new additions to critical facilities located within the special flood hazard area shall be regulated to a higher standard than structures not determined to be critical facilities. For the purposes of this Article, protection shall include one (1) of the following:

1. Location outside the special flood hazard area; or

2. Elevation of the lowest floor or flood proofing of the structure, together with attendant utility and sanitary facilities, to at least two (2) feet above the base flood elevation.

f. Ingress and egress for new critical facilities. New critical facilities shall, when practicable as determined by the City of Black Hawk, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a one hundred (100) year flood event. (Ord. 2013-49 §1)

Sec. 18-218. Standards for subdivision proposals.

(a) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Sections 18-201 through 18-203 of this Article.

(b) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet

the development permit requirements of Sections 18-207, 18-214 and 18-216 through 18-221 of this Article.

(c) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which are greater than fifty (50) lots or five (5) acres, whichever is lesser, if not otherwise provided pursuant to Section 18-206 or Paragraph 18-213(8) of this Article.

(d) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

(e) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage. (Ord. 2013-49 §1)

Sec. 18-219. Standards for areas of shallow flooding (AO/AH/VO zones).

Located within the areas of special flood hazard, established in Section 18-206 of this Article, are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

(1) All new construction and substantial improvements of residential structures shall have the lowest floor (including basement) elevated above the highest adjacent grade at least one (1) foot above the depth number specified in feet on the City’s FIRM (at least three (3) feet if no depth number is specified).
(2) All new construction and substantial improvements of nonresidential structures shall:

a. Have the lowest floor (including basement) elevated above the highest adjacent grade at least one (1) foot above the depth number specified in feet on the City’s FIRM (at least three (3) feet if no depth number is specified); or

b. Together with attendant utility and sanitary facilities, be designed so that below one (1) foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(3) A registered professional engineer or architect shall submit a certification to the Building Inspector that the standards of this Section are satisfied.

(4) Within Zones AO, AH or VO, adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures shall be required. 

(Ord. 2013-49 §1)

Sec. 18-220. Floodways.

Floodways located within areas of special flood hazard, established in Section 18-206 of this Article, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

(1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the City during the occurrence of the base flood discharge.

(2) If Paragraph (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Sections 18-216 through 18-221 of this Article. (Ord. 2013-49 §1)

Sec. 18-221. Special crawlspace provisions.

New construction and substantial improvement of any below-grade crawlspace shall:

(1) Have the interior grade elevation that is below base flood elevation no lower than two (2) feet below the lowest adjacent grade;

(2) Have the height of the below-grade crawlspace measured from the interior grade of the crawlspace to the top of the foundation wall not exceed four (4) feet at any point;

(3) Have an adequate drainage system that allows floodwaters to drain from the interior area of the crawlspace following a flood;

(4) Be anchored to prevent flotation, collapse or lateral movement of the structure and be capable of resisting the hydrostatic and hydrodynamic loads;

(5) Be constructed with materials and utility equipment resistant to flood damage;

(6) Be constructed using methods and practices that minimize flood damage;

(7) Be constructed with electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities that are designed and/or located so as to
prevent water from entering or accumulating within the components during conditions of flooding;

(8) Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

a. A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided;

b. The bottom of all openings shall be no higher than one (1) foot above grade; and

c. Openings may be equipped with screens, louvers or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters. (Ord. 2013-49 §1)

Sec. 18-222. Prohibited uses.

No development or alteration in, on or over any part of the floodplain shall be permitted which alone or cumulatively with other such uses would cause or result in:

(1) The storing or processing of materials that are buoyant, flammable, explosive, radioactive or otherwise potentially injurious to human or plant life.

(2) The disposal of garbage or other solid or liquid waste materials.

(3) The potential of substantial solid debris or waste being carried downstream.

(4) The development or use of public and commercial overnight campgrounds and travel trailer parks.

(5) An obstruction. The term obstruction shall not include any device or structure reasonably necessary for the diversion or storage of water or for flood control or prevention, so long as such device or structure has been appropriately designed and constructed to minimize potential flood hazards. (Ord. 2013-49 §1)

Sec. 18-223. Abatement notice.

In addition to the penalty provided by Section 18-226 below, the owner, occupant or person in control of any premises which are found to be in violation of any provision of this Article will be given a ten-day notice in writing to abate and remove the condition. However, where an emergency condition exists as defined in Section 18-224 below, this ten-day notice should not apply. (Ord. 2013-49 §1)

Sec. 18-224. Inspection.

(a) Whenever it is necessary to make an inspection to enforce any provision of this Article, the Building Inspector or the Building Inspector's designee may go upon any land located within the flood hazard areas of the City at any reasonable time to inspect the same or to perform any duty imposed hereunder; provided that if such land or premises is occupied, such Inspector shall first present proper credentials and request entry; and if such land or premises is unoccupied, he or she shall first make a reasonable effort to locate the owner, occupant or other person having charge or control over the land or premises, and upon locating the owner, occupant or other person shall present proper credentials and request entry. If entry is refused or if the owner or occupant cannot be located after reasonable effort, the authorized Inspector shall leave at the building or premises a twenty-four-hour written notice of intention to inspect. The notice given shall state that the
property owner has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a Municipal Judge of the City, or judge of any court having jurisdiction. After expiration of the twenty-four-hour period from the giving or leaving of such notice, the authorized Inspector may appear before any Municipal Judge or judge of any other court having jurisdiction, and upon a showing of probable cause shall obtain a search warrant entitling him or her to enter the land or the premises. Upon presentation of the search warrant and proper credentials, or possession of same in the case of unoccupied land or premises, the authorized Inspector may enter into the premises or upon the land. It is unlawful for any owner or occupant of the building or premises to refuse entry into premises or upon land described in the search warrant.

(b) For purposes of this Subsection, a determination of probable cause will be based upon reasonableness, and if a valid public interest justified the intrusion contemplated, then there is probable cause to issue a search warrant. The person applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the particular land or premises at issue in order to obtain a search warrant.

(c) Whenever an emergency situation exists in relationship to the enforcement of any of the provisions of this Article, an authorized Inspector upon a presentation of proper credentials or identification, in the case of unoccupied premises or land, may enter into any premises or upon any land within the flood hazard areas of the City. In emergency situations, such person may use such reasonable force as may be necessary to gain entry into the premises or upon the land. For purposes of this Subsection, an emergency situation includes any situation where there is imminent danger to the health, safety and general welfare of the citizens of the City, and/or imminent public and private losses due to flood conditions in specific areas. It is unlawful for any owner or occupant of the premises or land to resist reasonable force used by the authorized Inspector acting pursuant to this Subsection.

(d) Any Municipal Judge of the City shall have power to issue search warrants upon the showing of probable cause for the implementation as provided in Subsection (b) above. (Ord. 2013-49 §1)

Sec. 18-225. Enforcement and abatement.

If any person or any owner or occupant of any premises upon whom notice is served as provided by Section 18-223 above does not abate or remove the conditions described in the notice within the ten-day period provided, the City, may at its discretion and in lieu of obtaining a court injunction, proceed to abate the condition causing the flood hazard and shall charge the person, owner or occupant of the premises with all of the cost of the abatement or removal. The condition may be abated or removed by the authorized Inspector of the City. The cost of removal or abatement shall be reported to the City Clerk who shall certify such cost to the County Treasurer as provided by State statute, to be collected by such County Treasurer as provided by State statute. (Ord. 2013-49 §1)

Sec. 18-226. Penalty.

Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. For each day or portion thereof during which any violation continues, a person may be cited for a separate civil infraction. The penalties specified in this Section shall be cumulative and nothing shall be construed as either prohibiting or limiting the City from pursuing such other remedies or penalties in an action at law or equity. (Ord. 2013-49 §1)
Sec. 18-227. Cumulative remedies.

All remedies set forth herein are cumulative, and the exercise of one (1) shall not be deemed to prevent the exercise of another, nor to bar or abate any prosecution or petition for injunction hereunder. (Ord. 2013-49 §1)

Secs. 18-228—18-240. Reserved.

ARTICLE VII

Excavations

Sec. 18-241. Definitions.

As used in this Article, the following words shall be construed to have the meanings defined below:

Applicant and/or permittee is a person who requests a permit for work within the City under this Article.

Building Official means the Building Official of the City.

Completion funds means one hundred ten percent (110%) of the funds necessary to complete an excavation project: (a) that exceeds twenty-five thousand (25,000) cubic yards from a site; and (b) includes a portion or all of the site is located within the gaming and entertainment district; or (c) site that includes an accessory to a project that is being developed in part or in whole within the gaming and entertainment district; or (d) includes a site located anywhere within the City. The applicant shall submit such funds in one (1) or some combination of the following forms: an irrevocable line of credit, an irrevocable letter of credit, an irrevocable
contract line of credit, a cash escrow, or any combination of the above in an amount equal to or greater than an actual bid provided by the chosen contractor that will perform the excavation project, plus a contingency of ten percent (10%). Such funds shall be used in accordance with a site improvement agreement approved by the City, which details a draw schedule tied to specific goal attainments, which draw schedule shall not allow draws to occur more frequently than once a month. Such funds shall be increased or decreased to account for changes in cost due to change orders relating to the excavation project as approved by the City.

**Environmental and geotechnical investigation** means the testing and investigation requirements set forth in this Article.

**Excavation** means any grading or earth movement of any type whatsoever, including but not limited to bench excavation and foundation excavation.

**Bench excavation** means an excavation down to the grade level that is equal to, or no lower than, the nearest adjacent abutting roadway or street.

**Foundation excavation** means an excavation below the grade of the nearest adjacent abutting roadway or street.

**Excavation project** means an excavation that is undertaken pursuant to a permit.

**Permit** means an excavation permit required by Section 18-242 below.

**Site rehabilitation** means: (a) to make the site desirable for another development; (b) to complete the excavation so that the site poses no danger to the public, the site's neighbor or is a nuisance; (c) to perform (b) above, plus install landscaping or other amenities; (d) to make the site useable at a minimum for an at-grade parking lot according to City standards; (e) to mitigate off-site impacts of an unfinished excavation project. (Ord. 92-1 §1; Ord. 93-8 §1; Ord. 94-1 §1; Ord. 96-25 §1; Ord. 99-23 §1)

Sec. 18-242. Excavation permit.

(a) It shall be unlawful for any person to commence excavating without first having obtained approval of a site development plan and an excavation permit. However, no site development plan or permit shall be required for the following:

1. Cemetery graves;

2. Refuse disposal sites controlled by other regulations; or

3. A fill less than one (1) foot in depth and placed on natural terrain, with a slope flatter than five (5) horizontal to one (1) vertical, or less than three (3) feet in depth, not intended to support structures, which does not exceed fifty (50) cubic yards on any one (1) lot and does not obstruct a drainage course.

(b) A separate permit shall be required for each site.

(c) The permit shall be retained at the site location to which the permit is issued at all times until completion of the work unless specifically exempted by the Building Inspector in writing pursuant to the provisions of this Article. (Ord. 92-1 §2; Ord. 93-8 §2)

Sec. 18-243. Fees required.

At the time of filing an application for an excavation permit, a nonrefundable filing fee as set forth in the Uniform Building Code, Chapter...
70, as amended, as adopted in this Chapter, shall be paid to the City. (Ord. 92-1 §3; Ord. 93-8 §3; Ord. 94-1 §1)

Sec. 18-244. Application for and issuance of permit.

(a) Application for an excavation permit shall be made to the Building Inspector on forms provided by the City. Such application shall require the following information:

(1) The name, address and telephone number of the landowner, developer and permittee;

(2) A plan showing the location and description of the proposed excavation and construction to be performed in relation to the boundaries and other improvements on the property;

(3) The approximate size of any excavation to be made and the purpose for such excavation;

(4) The location of any street and any adjacent properties that will be affected by the excavation. If the excavation affects a street or an adjacent property, a copy of an agreement between the City or the property owner and the applicant which authorizes the applicant to undertake the excavation;

(5) Location of any structure or natural feature on the site, such as stream channels, trees, rock outcroppings or wetlands;

(6) Location of any structure, historic structure, natural feature or historic features on the land adjacent to and within fifty (50) feet of the site boundary;

(7) Elevations, dimensions, location, extent and the slope of all proposed grading, including building and driveway grades;

(8) The approximate time which will be required to complete all work, including backfilling any excavation and removal of all materials, equipment and debris from the site, and removal of all obstructions from the property;

(9) Three (3) sets of drawings and specifications in a form satisfactory to the Building Inspector;

(10) A schedule of proposed construction;

(11) The estimated total cost of backfilling any excavation and removal of all materials, equipment and debris from the site, and removal of all obstructions from the property;

(12) For a foundation excavation permit, a copy of the approval of the subdivision plat or site development plan for the property. If the plat or plan has not been approved, a copy of the plat or plan and a statement of when it was submitted to the City. No subdivision plan or site development plan shall be required for the issuance of a bench excavation permit;

(13) All environmental and geotechnical investigation reports required in this Article;

(14) Proof of notice by certified mail to all adjacent property owners advising such owners that permittee is seeking an excavation permit and the City may consider, prior to issuing an excavation permit, any comments from such property owners submitted to the Building Inspector within five (5) working days of the notice; and

(15) Such further information as may be required by the Building Inspector to efficiently administer and enforce the provisions of this Article.
(b) The excavation permit shall consist of the site development plan and any other information or conditions that may be attached thereto and made part of the permit by the Building Inspector. The conditions stated in both the site development plan and the excavation permit shall be conditions of the excavation permit.

(c) The Building Inspector shall deny any application for a permit for the following reasons:

1. The application is incomplete and the deficiencies therein are not remedied after reasonable notice to the applicant;

2. The work for which the application for the permit is to be issued is unnecessary, improper or in violation of City ordinances, rules or regulations;

3. The applicant is in default of the provisions or conditions of any other outstanding permit of similar character, without good cause;

4. The applicant has failed to obtain the required insurance or has failed to post the required bonds, letters of credit or other guarantees of performance;

5. The applicant has failed to pay the required permit fees;

6. The applicant is, in the opinion of the Building Inspector, not qualified by experience, training or education to engage in the activity authorized by the permit;

7. The applicant has had any contractor license or permit revoked or suspended;

8. The permittee has failed to obtain approval of a site development plan;

9. The environmental and geotechnical investigation reveals that environmental action levels on heavy metals are exceeded, or other environmental, geotechnical or inactive mine hazards are indicated. Provided, however, that if the applicant takes action to remedy the hazards, and submits a report establishing that such hazards have been remedied to the satisfaction of the City, a permit may be issued; or

10. There is not adequate assurance that the applicant has provided protection to adjacent properties for the effects of the proposed excavation on the adjacent properties. Such protection may include assurance of subjacent support and indemnification for any damages resulting from the excavation to adjacent properties. (Ord. 92-1 §4; Ord. 93-8 §4; Ord. 96-25 §2)

Sec. 18-245. Revocation of permit.

(a) The Building Inspector may revoke the permit granted by this Article if the applicant is found to have violated any of the provisions listed in Section 18-244 above, or in any of the following circumstances:

1. The permittee violates any of the provisions of the ordinances of the City governing the activities permitted by the permit;

2. The permittee obtains a permit by fraud or misrepresentation;

3. Revocation is necessary to maintain the public health, safety and welfare;

4. The permittee fails to maintain the required insurance, bond, letter of credit or other guarantees of performance during the course of the construction and of the warranty period specified by the City; or
(5) The permittee fails to comply with any of the conditions set forth in the site development plan or the excavation permit.

(b) The Building Inspector shall advise the permittee in writing of the grounds for revocation of the permit and the permittee may be allowed to appeal such revocation to the Board of Aldermen. (Ord. 92-1 §5; Ord. 93-8 §5)

Sec. 18-246. Term of permit.

The expiration date of the excavation permit issued under this Article shall be established by the Building Inspector. Once established, the Building Inspector may, for good cause shown, grant additional extensions. (Ord. 92-1 §6; Ord. 93-8 §6; Ord. 94-1 §1)

Sec. 18-247. Permittee responsibility.

(a) The applicant for the permit provided herein shall be responsible for all work performed under the permit whether or not the applicant, his or her employees or subcontractor performs the work.

(b) The City shall be notified in writing five (5) working days prior to the initiation of any construction.

(c) The City shall be notified in writing within forty-eight (48) hours after the completion of construction.

(d) Upon completion of construction, the applicant will submit to the City a written request for final inspection.

(e) The City shall have, at any time, the right of access to the construction site to inspect all materials and workmanship and to inspect the installation to determine compliance with the permit, the general conditions of this Article, specifications adopted by the City, and all other ordinances or resolutions adopted by the City.

The City shall have the right to stop work if items or situations are found to be unacceptable or in the event access to the site for inspection is denied.

(f) No person shall excavate an area larger or at a location different than that specified in the application or on the permit. However, if it becomes necessary to excavate a larger area than originally requested, the permittee shall notify the Building Inspector immediately and within twenty-four (24) hours shall file a supplementary application for the additional excavation. (Ord. 92-1 §7)

Sec. 18-248. Corrective measures.

The Building Inspector, upon discovery of any defect in the work or for the permittee failing to complete the excavation including backfilling and removal of debris for which an excavation permit is issued, may:

(1) In the event of an emergency, order a private contractor to do everything necessary to complete such work to acceptable standards, particularly where hazards exist due to the failure of the permittee to restore or maintain the site in accordance with the provisions and conditions of his or her permit.

(2) In the event of a nonemergency, give notice to the permittee and his or her sureties in writing of the nature and location of such defects, including notice of a reasonable time, not less than twenty-one (21) calendar days, within which such defects are to be repaired. Such period of time may be extended by the Building Inspector upon application, for cause shown.

(3) In the event of failure of the permittee to perform the required work within the period provided by such notice, a private contractor on order of the City shall make such repairs as may be necessary.
(4) The City shall recover any and all costs of work performed by its personnel or by a private contractor, including the cost of labor, equipment, materials and administrative costs at the expense of the permittee by applying any deposit, bond, letter of credit or other security in its possession to payment thereof, and shall recover any remaining unpaid balance of such costs from the permittee. (Ord. 92-1 §8)

Sec. 18-249. Protection of adjoining property.

(a) The permittee shall at all times, and at his or her own expense, preserve and protect from injury any adjoining property by providing proper foundations and by taking other measures suitable for the purpose of preventing damage to any adjoining property.

(b) When for the protection of property it is necessary to enter upon such property for the purpose of taking appropriate protective measures, the permittee shall obtain written permission from the owner of such property to enter thereupon.

(c) The permittee shall, at his or her own expense, shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of his or her excavation work and the permittee shall be responsible for all damage to public or private property or highways resulting from the work.

(d) Whenever it may be necessary for the permittee to trench through any lawn area, such area shall be reseeded or the sod shall be carefully cut, rolled and replaced after the excavation has been backfilled as required in this Article.

(e) All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began. (Ord. 92-1 §9)

Sec. 18-250. Certificate of insurance.

Every permittee, before commencing operations, shall be insured to the extent of two hundred thousand dollars ($200,000.00) per person, six hundred thousand dollars ($600,000.00) per occurrence, against liability arising from production, activities or operations incidental thereto conducted or carried under or by virtue of any law, resolution or condition imposed by this Article; and such insurance shall be kept in full force and effect during the period of such operation, including site rehabilitation. A certificate indicating protection by such insurance shall be filed with the application for the permit. Such insurance shall not be released until final inspection and approval has been completed by the appropriate officer. The insurance policy shall contain a clause that if the policy is changed or cancelled, the City is entitled to written notice ten (10) days prior to any change or cancellation. (Ord. 92-1 §10; Ord. 94-1 §1)

Sec. 18-251. Site rehabilitation security required.

To ensure site rehabilitation and repair any damage caused on or off-site by an excavation project, there shall be required at the time the original permit is issued, a letter of credit or cash, naming the City as the protected party. Such security shall be in the amount of ten percent (10%) of the total cost of the excavation project or one thousand dollars ($1,000.00), whichever is greater. Such security shall not be released until after final inspection or certificate of occupancy and approval has been completed by the appropriate officer. (Ord. 92-1 §11; Ord. 93-8 §7; Ord. 99-23 §2)

Sec. 18-252. Imposition of financial responsibility requirements.

In addition to all other requirements of the City to be fulfilled prior to the commencement of an excavation project that: (1) exceeds twenty-five thousand (25,000) cubic yards from
a site; (2) includes a portion or all of the site is located within the gaming and entertainment district; (3) site that includes an accessory to a project that is being developed in part or in whole within the gaming and entertainment district; or (4) includes a site excavated anywhere within the City, every applicant shall provide evidence of financial responsibility reasonably adequate to demonstrate:

(1) To the reasonable satisfaction of the City that the applicant has obtained completion funds. Completion funds shall be in a form such that the City can draw upon the entire amount of the completion funds in the event that the applicant does not diligently cause completion of the excavation project.

(2) That the applicant has obtained a letter of commitment from a reputable financing source reasonably acceptable to the Finance Director of the City, or designee, stating: (a) that such source has or shall have funds available and committed to complete the construction program for which the excavation permit is requested; (b) that such source has provided or shall provide the funds when needed to complete the construction program on schedule; (c) all conditions precedent, if any, for the payment of such funds; and (d) such other financial information as may be reasonably required by the City Finance Director or designee to evaluate whether the completion of the construction program is reasonably likely to occur, or if the completion of the construction fails to occur, that the partially completed construction shall not become a burden to the public, having a negative impact on the business community or be a hazard to the public. (Ord. 99-23 §3)

Sec. 18-253. Use of completion funds by City.

(a) If, at any time prior to the completion of the excavation project, the applicant stops work on the excavation project for ten (10) consecutive calendar days or more, other than for demonstrated force majeure, then the City shall draw the remaining amount of the completion funds and cause either commencement of the remaining work to complete the excavation project or site rehabilitation within sixty (60) days after the applicant’s work on the excavation project.

(b) Upon the completion of the excavation project or site rehabilitation, any remaining completion funds held by the City shall be released to the applicant or as directed by the applicant, within thirty (30) calendar days of such completion. (Ord. 99-23 §4)

Sec. 18-254. Inspection/completion of excavation.

(a) The Building Official shall make inspections as are necessary for the enforcement of this Article.

(b) The Building Official shall have the authority to enforce such regulations as may be reasonably necessary to enforce and carry out the intent of this Article.

(c) The date of the completion of the excavation project shall be determined by the City by either: (1) for an excavation project for the construction of public improvements to be conveyed to the City, the applicant shall submit to the City a letter requesting a final inspection of the excavation project. The City shall respond within fifteen (15) calendar days with a finalized master punch list inclusive of all deficiencies; such list shall act as the sole controlling document for the acceptance of the excavation project. The applicant shall correct such punch list items and request a final sign-off from the master punch list. The City shall respond within fifteen (15) calendar days with any deficiencies in the corrections of the master punch list items, and this procedure shall be repeated until all master
punch list items are completed to the satisfaction of the City. If the City does not respond within thirty (30) calendar days of the letter requesting final inspection or to a request for a final sign-off, then the excavation project shall be deemed to be completed upon the expiration of such thirty (30) calendar days; (2) for an excavation project for the construction of improvements other than such public improvements, the engineer or architect of record for the excavation project shall inspect the excavation project and shall provide a written certification to the City that the excavation project has been completed substantially in compliance with the requirements of the excavation permit. With such certification, the engineer or architect of record shall provide a copy of a certificate evidencing current professional errors and omissions insurance in an amount of not less than twenty percent (20%) of the completion funds required for the excavation project and naming the City as an additional insured under such policy for the purpose of the excavation project. Such policy shall remain for two (2) years following the date of completion. The City shall deem the excavation project to be complete upon the City's receipt of such certification; and (3) for an excavation project that includes improvements both within both (1) and (2) above, both the procedure in (1) shall be used for the public improvements within the scope of (1), and the procedure in (2) shall be used for the improvements within the scope of (2). (Ord. 92-1 §12; Ord. 99-23 §5)

Sec. 18-255. Environmental and geotechnical sampling and testing.

(a) All applicants for an excavation permit or a site development plan shall prepare a sample collection plan including a chemical characterization of the metals content of the soils and geotechnical testing on the property sought to be excavated or developed. The areas most vulnerable for environmental contamination are:

1. Known mining or milling sites;
2. Properties adjacent to or down gradient from mining and milling areas;
3. Listed Superfund sites;
4. Properties adjacent to or down gradient from Superfund sites;
5. Properties with known chemical storage or former gas or fuel storage areas;
6. Properties adjacent to or down gradient from properties that had chemical or fuel storage;
7. Properties in flood plains or drainages that are down gradient from any of the above sites;
8. Properties with unstable slopes or waste piles reposed above them; and
9. Properties subject to stormwater runoff from any of the above-listed properties.

(b) If an applicant is developing on property outside a vulnerable area as described above, relief from some of the testing and sampling requirements may be allowed. A report from a qualified environmental/geotechnical firm must be submitted indicating its opinion of the extent of testing which will be necessary to protect the public health and environment.

(c) If an applicant for an excavation or development review permit concerns a property which was specifically identified as a priority concern in the 1991 Record of Decision issued by the U.S. Environmental Protection Agency and the Colorado Department of Health, the permit will not be approved unless the U.S. Environmental Protection Agency and the Colorado Department of Health have been provided a
reasonable opportunity to comment on the permit application, and have not disapproved the action proposed by the permit application based on state or federal legal requirements.

(d) The specific priority sites identified by the U.S. Environmental Protection Agency and the Colorado Department of Health which are located in the City include the following areas:

<table>
<thead>
<tr>
<th>Site</th>
<th>Approximate Location Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gregory Incline</td>
<td>Black Hawk, Colorado, discharge of contaminated water from incline.</td>
</tr>
<tr>
<td>Chase Gulch #2</td>
<td>Smith Lode 292, Wain Lode, Mineral Survey 590, and All Nation Lode, Mineral Survey 18091.</td>
</tr>
<tr>
<td>Golden Gilpin</td>
<td>Millsite 10 (Mead Millsite) and Millsite 11 (Lake Millsite). Also Smith Lode 502 (overlaps Millsite 11) and Surprise Lode 15778 (overlaps Millsite 10).</td>
</tr>
<tr>
<td>National Tunnel</td>
<td>Wabash Lode U.S. Survey 42, and numerous mineral surveys and lots where tailings are located, and discharge of contaminated water from tunnel.</td>
</tr>
</tbody>
</table>

(e) Testing requirements. The following requirements and guidelines shall govern all environmental testing and sampling performed under this Article.

(1) All sample collection plans shall be representative of the conditions at the property.

(2) The number and types of samples collected shall provide a reasonable and accurate representation of the entire property. By way of clarification, samples shall not be collected at the visually cleanest portion of the property and be presented as being representative.

(3) A minimum of one (1) augured subsurface soil sample shall be collected at a depth of zero (0) to two (2) feet per each one thousand five hundred (1,500) square feet of lot. A maximum of three (3) individual samples may be composited, if desired, and the minimum of two (2) individual analyses of the samples must be completed. Samples may only be composited if, based on visual appearance, mine waste is not combined with soil.

(4) Sites previously capped or backfilled shall be augured and one (1) soil sample collected to a minimum depth of ten (10) feet. At least one (1) sample per lot or four thousand five hundred (4,500) square feet shall be augured and a sample taken to a depth equal to the depth of the proposed excavation.

(5) All sampling must be performed by a nonbiased third party.

(6) Proper chain of custody shall be maintained and established for all samples collected from the property. All samples shall be submitted to a laboratory that has experience and is qualified to perform metals analysis in a solid matrix.

(7) Analytical methods shall conform to the procedures outlined in EPA field and laboratory methods, SW. 846, 3rd edition, as amended, November of 1986, or an approved equivalent method. For acid-base potential, tests should conform to the methods outlined in Report No. EPA-670/2-74-070, Mine Spoil Potential for Soil and Water Quality, or an equivalent method.

(8) At a minimum, all samples shall be analyzed for the following parameters:

   a. Lead.
b. Arsenic.
c. Zinc.
d. Mercury.
e. Acid-base potential.
f. Soil pH.

(9) All samples for lead, arsenic, zinc and mercury shall be analyzed for total metals.

(10) If the historical use of the property includes uses which could result in soil contamination, the appropriate chemical testing must be included in the sample collection plan.

(11) Any other tests required by the U.S. Environmental Protection Agency or the Colorado Department of Health as determined by the City.

(f) Soil importation. If the permittee desires to import soils onto the property, the permittee must provide a verification of the quality of these soils.

(g) Submission of sampling plan. A copy of the sampling plan must be submitted to the City, and must include the location and depth of all bore holes and location of the sampling, results of all tests and analysis required by this Article and any other public entity with jurisdiction, and the names and addresses of all consultants, engineers, testers and laboratories used. An explanation of why the specific locations and depths were chosen shall accompany all sampling plans.

(h) Slope stability analysis. A slope stability analysis must be completed by a qualified registered professional engineer if development or excavation is planned for a lot with:

(1) Any slope greater than thirty-five percent (35%);

(2) Any development which will result in a slope being created which is greater than thirty-five percent (35%);

(3) Any property with wood cribbing, rock retaining walls or other similar retaining structures or remnants of retaining structures.

(i) Surface subsistence. An analysis of the potential for surface subsistence due to the presence of underground mine workings must include the following:

(1) Pilot bore hole drilling must be conducted prior to proceeding with any development that will require the earth to support any significant structure or vehicular traffic.

(2) The permittee must contact the inactive mines program of the Colorado Mined Land Reclamation Division to obtain information about past and future mine hazard and mitigation activities, and to coordinate any activity which may be undertaken by the permittee. (Ord. 93-3 §2; Ord. 99-23 §6)

Sec. 18-256. Mitigation requirements.

(a) General considerations. If the results of the environmental and geotechnical sampling and testing show that excavation on or development of the property would create a threat to the safety of the citizens or the environment of the City, or would violate the minimum standards set forth below, the application must include a plan for mitigation of those risks satisfactory to the City.

(b) Minimum standards. If the conditions of the property proposed for excavation or development exceed any of the minimum standards set forth below, the application shall not be approved unless a mitigation plan satisfactory to the City is included in the application.
(1) Risks which are determined unacceptable in the Clear Creek/Central City Superfund investigation, a copy of which is available from the City or another agency designated by the City.

(2) Mine wastes which contain concentrations greater than:
   a. Lead – five hundred (500) milligram/kilogram.
   b. Arsenic – one hundred thirty (130) milligram/kilogram.
   c. Mercury – ten (10) milligram/kilogram.
   d. Zinc – one thousand (1,000) milligram/kilogram.

or which exhibit any of the following characteristics:
   e. The material has a negative acid-base potential.
   f. The soil pH is less than six (6.0).

Mercury is often concentrated in a limited area and will migrate downward. Therefore, samples containing concentrations of mercury over one (1) milligram/kilogram will need to be followed with a minimum of three (3) additional samples taken in the immediate area to the full depth of the proposed excavation.

(3) Conditions which violate applicable standards set forth by the Colorado Department of Health or the U.S. Environmental Protection Agency.

(4) Any other conditions identified in the results of the sampling or testing which indicate that the proposed excavation or development may create or accelerate a potential threat to the citizens of the City or the environs of the City which are not adequately mitigated by the mitigation plans contained in the application.

(c) Mitigation plans. If the application includes a plan for mitigation of environmental or geotechnical conditions of the property which the City determines adequately alleviates the potential threat to the citizens and environs of the City, the application may be approved by the City. Mitigation plans the City may consider include:

   (1) Scientific justification that mine wastes will not migrate into surface or ground water or otherwise present a harm to humans or the environment.

   (2) Plans for excavation and off-site disposal at a permitted disposal facility of contaminated soils or mine wastes. A permittee utilizing off-site disposal shall confirm that the facility accepting the waste material has been approved by the County, the State and, if applicable, the Environmental Protection Agency. The amount of material to be removed, a time schedule of removal, and documentation of a proper disposal facility must be included in the development plan.

   (3) Plans for on-site capping and institutional controls of mine wastes. All on-site capping must be designed to be resistant to erosion, be capable of isolating the waste from human exposure, and minimize infiltration in order to prevent degradation of ground water. Institutional controls will involve recording in the real estate records the estimated amount of mine waste on the property, the location of the mine waste, and the results of the geochemical analysis. The property owner shall be required to perform annual inspections of the cap to evaluate its
integrity, and to make all necessary repairs to the cap within thirty (30) days. The results of the annual inspection shall be submitted to the Public Works Department. If on-site capping and institutional controls are utilized, a permittee shall evaluate whether the mine waste is in contact with or contaminating ground water.

(4) Plans to neutralizing soil agents. In a situation where soil pH levels are the only parameters exceeded, the amendment of the soil with a neutralizing agent may be considered an accept-able course of action. Any proposal for amendment to the soil shall provide for the long-term neutralization of the soil, and shall take into consideration the results of the acid-based potential tests.

(5) Other engineering controls which adequately limit or remove the adverse conditions as a threat or danger to humans or the environment as determined by the City. (Ord. 93-3 §3; Ord. 99-23 §7)

Sec. 18-257. Consulting fees.

In addition to any other fees imposed by the City on the application, the applicant shall be responsible for and pay to the City the cost of any expert consultants which the City retains to review the test and sampling results and mitigation plans included in the application. (Ord. 93-3 §4; Ord. 99-23 §8)

Sec. 18-258. Failure to perform required testing and violations.

No excavation permit shall be issued or site development plan be considered if an applicant fails to perform the tests and to submit the reports required by this Article. It is illegal to falsify or fail to disclose to the City test results required by this Article. The performance of any excavation prior to complying with the provisions of this Article shall be a violation of this Article. (Ord. 93-3 §5; Ord. 99-23 §9)

Sec. 18-259. Persons liable.

The owner, tenant or occupant of any building or land or part thereof and any builder, agent or other person who participates in, assists, directs, creates or performs any excavation without first performing the requirements of this Article may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided. (Ord. 93-3 §7; Ord. 99-23 §10)

Sec. 18-260. Penalties and enforcement.

(a) Failure to comply with the terms of this Article shall constitute a civil infraction. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to a civil penalty as set forth in Section 1-74 of this Code. For each day or portion thereof during which any violation continues, a person may be cited for a separate civil infraction.

(b) The penalties specified in this Section shall be cumulative and nothing shall be construed as either prohibiting or limiting the City from pursuing such other remedies or penalties in an action at law or equity. Any action in law or equity may include, but is not limited to, instituting an appropriate action to prevent any excavation when excavation is undertaken without performing the requirements of this Article or enjoining contemplated actions or inactions in violation of this Article. The City shall be entitled to recover its attorneys’ fees incurred in bringing any action to compel compliance with the provisions of this Article, as well as any costs incurred to remove fill, restore the area, conduct independent testing or perform any requirements that should have been performed prior to undertaking the activity. (Ord. 94-1 §1; Ord. 99-23 §11)

Secs. 18-261—18-270. Reserved.
ARTICLE VIII
Blasting and Use of Explosives

Sec. 18-271. Definitions.

As used in this Article, the following words shall be construed to have the meanings defined below:

*Blasting operations* means the use of explosives within the City.

*Blasting permit* means a permit issued by the City in accordance with the provisions of this Article to allow blasting operations within the City.

*Blasting plan* means the plan for conduct of any blasting operations and any amendments thereto, which has been approved by the City as provided in this Article.

*Downtown area* includes all real property located within the boundaries of the City.

*Explosives* means any material or container containing a chemical compound or mixture that is commonly used or intended for the purpose of producing an explosion and that contains any oxidizing and combustible materials or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, but shall not mean the components for hand-loading rifle, pistol and shotgun ammunition, or fireworks.

*Seismograph.* The seismograph shall:

a. Be capable of measuring three (3) wave components; vertical, longitudinal and transverse;

b. Be equipped with a self-triggering device;

c. Automatically calculate peak particle velocity;

d. Provide a hard copy of the wave forms; and

e. Contain an event summary of disk with internal disk storage system to store as many events as may occur each day.

(Ord. 94-28 §1; Ord. 98-53 §1)

Sec. 18-272. Permit required.

(a) The manufacture, storage and use of explosives within the City is to be governed by this Article, which shall be known as the Blasting Ordinance of the City. It shall be unlawful to manufacture, store or use explosives except in compliance with this Article. A blasting permit issued by the City shall be required for the use of any explosives within the City. In order to obtain a permit, the applicant must have met all of the requirements of this Article and any other applicable local, state or federal law, ordinance, rule and regulation. A blasting permit is personal to the individual to whom it is issued and may not be assigned.

(b) A building or excavation permit is required before a blasting permit will be issued. A blasting permit must be issued forty-eight (48) hours prior to blasting.

(Ord. 94-28 §1; Ord. 98-53 §1)

Sec. 18-273. Qualifications for permit.

In order to obtain a blasting permit, the applicant must:

(1) Have been issued a current explosives permit issued by the Colorado Department of Employment and Training pursuant to Section 9-7-101, et seq., C.R.S.
(2) Provide proof of workers’ compensation insurance and general liability and property damage insurance coverage in an amount of at least one million dollars ($1,000,000.00).

(3) Provide a corporate surety bond in the principal sum of five hundred thousand dollars ($500,000.00) or a public liability insurance policy for the same amount for the purpose of the payment of damages to persons or property which arise from, or are caused by, the blasting operations of a holder of a blasting permit.

(4) Provide evidence that the permittee is state certified in surface blasting operations. (Ord. 94-28 §1; Ord. 98-53 §1)

Sec. 18-274. Blasting operations.

(a) Blasting and drilling operations shall be conducted in accordance with Article V, Construction Activity, of this Chapter.

(b) Explosives may only be handled by the permittee.

(c) No person shall be on the property for which a blasting permit is issued or explosive materials are being handled or stored, while under the influence of alcohol, intoxicants, narcotics or other DEA-controlled substances during blasting operations, or at any other time.

(d) No person for which a blasting permit is issued shall smoke tobacco or any other substance within fifty (50) feet of any explosive material or have in his or her possession any matches, lighters or other spark-producing materials during blasting operations.

(e) No open flames shall be allowed on the property for which a blasting permit is issued during blasting operations.

(f) Only nonelectric initiation systems with twenty-five (25) ms delay intervals may be used. Electric detonators or blasting caps are allowed only for the initiation of the blast.

(g) Prior to firing a blast, the permittee shall make certain that surplus explosive materials are in a safe place, and that all persons and vehicles are at a safe distance or under sufficient cover.

(h) The permittee shall remove all debris, blasting caps and other materials related to the blasting operations from the site prior to leaving the site each day of blasting operations.

(i) All blasting and drilling operations shall be conducted in accordance with the fire code in effect within the City at the time the blasting permit is obtained. (Ord. 94-28 §1; Ord. 98-53 §1; Ord. 2004-7 §1)

Sec. 18-275. Notification prior to blasting operations.

(a) The Fire Department shall be notified thirty (30) minutes prior to any ignition of an explosive.

(b) The permittee must comply with the requirements of Section 9-1.5-101, et seq., C.R.S., regarding location of underground facilities prior to any blasting operations.

(c) The occupants of all property within two hundred (200) feet of the property for which a blasting permit is issued must be notified at least twenty-four (24) hours in advance by placing a notice on the door of all buildings within such area, and the permittee shall certify that such notice has been provided in writing to the City. Two (2) minutes prior to any blasting operations, the permittee will warn of the shot by use of an air horn that is clearly audible within such area. (Ord. 94-28 §1; Ord. 98-53 §1)
Sec. 18-276. Blasting plan.

The permittee must submit, as part of the permit application, a detailed plan of the proposed blasting operations. All blasting operations shall be conducted in strict accordance with the approved blasting plan. Any changes to the planned blasting operations must be submitted as an amendment to the blasting plan to the City. The plan shall include:

(1) A map with north indicated by arrow, depicting the property for which a blasting permit is sought; the work area relative to any structures or other underground or overhead improvements; the location and duration of storage of any explosive materials to be used in the blast before, during and after each blast; the spacing, depth and diameter of boreholes; the area to be cleared of vehicles and persons immediately prior to and during any blast; and anything else required by applicable law, rule or regulation or which the City determines is necessary to reasonably protect the public health, safety and welfare of the residents of the City.

(2) A description of the maximum amount of explosives per delay; the type of explosive product used; the method of ignition of the explosive; the loud warning signal that is to be sounded prior to each blast; the manner of locating and detonating any misfires; the manner in which qualified emergency and utility personnel are to be put on notice and called to respond in the event of an emergency; the manner of clearance of the site after blasting operations including returning the site to its original condition; and anything else required by applicable law, rule or regulation, or which the City determines is necessary to reasonably protect the public health, safety and welfare of the residents of the City. (Ord. 94-28 §1; Ord. 98-53 §1)

Sec. 18-277. Blasting specifications.

(a) The maximum borehole diameter shall be whatever is determined by the blaster as safe based upon a nationally accepted standard.

(b) The minimum borehole depth shall be whatever is determined by the blaster as safe based upon a nationally accepted standard.

(c) A seismograph must be used to monitor vibrations next to a structure when a structure is less than two hundred (200) feet from a borehole loaded with explosives or on any blast located in the downtown area.

(d) Explosive to be used as determined by the blaster as safe based upon a nationally accepted standard.

(e) All boreholes containing explosives shall be adequately covered. Absent extenuating circumstances, adequate coverage may be blasting mats when the distance to the nearest structure is less than or equal to two hundred fifty (250) feet and earth cover when the borehole is more than two hundred fifty (250) feet from the nearest structure. Blast mats shall be used within the downtown area.

(f) No blasting may occur within ten (10) feet of a structure unless determined by the blaster as safe based upon a nationally accepted standard.

(g) Areas from which fugitive dust particulate emissions will be emitted shall be required to use all available and practical methods which are technologically feasible in order to minimize such emissions. All state and federal requirements shall be complied with during drilling and blasting operations. (Ord. 94-28 §1; Ord. 98-53 §1)
Sec. 18-278. Manufacture and storage of explosives.

Explosives may not be manufactured anywhere in the City. Explosives may not be anywhere other than locations approved by the Fire Chief in writing; provided, however, that explosives may be stored at the location of blasting operations in accordance with the terms of a blasting plan and storage permit that is required to store explosives in the City. (Ord. 94-28 §1; Ord. 98-53 §1)

Sec. 18-279. Corrective measures.

(a) The City, upon discovery of any defect in the work or for the permittee failing to complete the blasting operations or removal of debris for which a blasting permit is issued, may:

(1) In the event of an emergency, order a private contractor to do everything necessary to complete such work to acceptable standards, particularly where hazards exist due to the failure of the permittee to restore or maintain the site in accordance with the provisions and conditions of his or her permit.

(2) In the event of a nonemergency, give notice to the permittee and his or her sureties in writing of the nature and location of such defects, including notice of a reasonable time, not less than twenty-one (21) calendar days, within which such defects are to be repaired. Such period of time may be extended by the City upon application for good cause shown.

(3) In the event of failure of the permittee to perform the required work within the period provided by such notice, a private contractor on order of the City shall make such repairs as may be necessary.

(b) The City shall recover any and all costs of work performed by its personnel or by a private contractor, including the cost of labor, equipment, materials and administrative costs at the expense of the permittee by applying any deposit, bond, letter of credit or other security in its possession to payment thereof and shall recover any remaining unpaid balance of such costs from the permittee. (Ord. 94-28 §1; Ord. 98-53 §1)

Sec. 18-280. Revocation of permit.

The City may revoke the permit granted by this Article if the applicant is found to have violated any of the provisions listed above, or in any of the following circumstances:

(1) The permittee violates any of the provisions of the ordinances of the City governing the activities permitted by the permit;

(2) The permittee obtains a permit by fraud or misrepresentation;

(3) Revocation is necessary to maintain the public health, safety and welfare; or

(4) The permittee fails to maintain the required insurance, bond, letter of credit or other guarantees of performance during the course of the construction and of the warranty period specified by the City.

The City shall advise the permittee in writing of the grounds for revocation of the permit, and the permittee may be allowed to appeal such revocation to the Board of Aldermen. (Ord. 94-28 §1; Ord. 98-53 §1)

Sec. 18-281. Violation and penalties.

(a) In addition to any other penalties authorized by this Code, the City is authorized to enforce this Article by injunction, including both the enjoining of contemplated actions or inactions in violation of this Article, including excavation or fill activities undertaken without or in violation of the terms of a permit; and mandatory injunction to require the removal of excavation or fill accomplished without or in vio-
lation of the terms of such a permit. In any such injunction action, the City shall be awarded its costs of suit, and any costs incurred in the removal of fill and/or restoration of areas where fill or excavation activities have been undertaken in violation of the provisions of this Article.

(b) In addition, the City shall be entitled to recover its attorneys' fees incurred in bringing any action to compel compliance with the provisions of this Article or to compel compliance with any plan approved hereunder. (Ord. 94-28 §1; Ord. 98-53 §1)

Secs. 18-282—18-300. Reserved.

ARTICLE IX

Growing of Medical Marijuana in Residential Structures

Sec. 18-301. Purpose.

This Article is intended to apply to the growing of medical marijuana in residential structures, whether such growing is done by patients for their own use or by primary caregivers. (Ord. 2013-5 §1)

Sec. 18-302. General provisions.

A primary caregiver, for purposes of this Article and consistent with Article XVIII, Section 14(1)(f) of the Colorado Constitution, is defined as a natural person, other than the patient and the patient's physician, who is eighteen (18) years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition. In addition to other activities conducted on behalf of the patient, a primary caregiver, a patient or a group of patients cultivating marijuana plants for their own use may cultivate, possess, produce, use or transport marijuana or paraphernalia to administer marijuana for medicinal purposes, subject to the following.

(1) Such cultivation, production or possession of marijuana plants must be in full compliance with all applicable provisions of Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, Section 44-11-101, et seq., and the Medical Marijuana Program, Section 25-1.5-106, C.R.S.

(2) Such marijuana plants are cultivated, produced or possessed within a licensed patient's or registered caregiver's primary residence, as defined by Paragraph (8) below.

(3) The cultivation, production or possession of such marijuana plants must not be perceptible from the exterior of the primary residence, including but not limited to:

a. Common visual observation, including any form of signage;

b. Unusual odors, smells, fragrances or other olfactory stimulus;

c. Light pollution, glare or brightness that disturbs the repose of another; and

d. Undue vehicular or foot traffic, including excess parking within the residential zone.

(4) Such marijuana plants shall not be grown or processed in the common areas of a multi-family or attached residential development.

(5) Such cultivation, production or possession of marijuana plants shall be limited to the following space limitations within a primary residence:

a. Within a single-family dwelling unit (Group R-3 as defined by the International Building Code): a secure, defined,
contiguous one-hundred-fifty-square-foot area within the primary residence of the licensed patient or registered caregiver.

b. Within a multi-family dwelling unit (Group R-2 as defined by the International Building Code): a secure, defined, contiguous one-hundred-square-foot area within the primary residence of the licensed patient or registered caregiver.

c. Such cultivation, production or possession of marijuana plants shall not occur in any accessory structure.

(6) Such cultivation, production or possession of marijuana plants shall meet the requirements of all adopted City building and life/safety codes, as the same may be amended from time to time.

(7) Such cultivation, production or possession of marijuana plants shall meet the requirements of all adopted water and sewer regulations promulgated by the City.

(8) For purposes of this Article, primary residence means the place that a person, by custom and practice, makes his or her principal domicile and address and to which the person intends to return following any temporary absence, such as vacation. Residence is evidenced by actual daily physical presence, use and occupancy of the primary residence and the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of and partaking of meals, regular mail delivery, vehicle and voter registration or credit, water and utility billing. A person shall have only one primary residence. A primary residence shall not include accessory buildings.

(9) For purposes of this Article, a secure area means an area within the primary residence accessible only to the patient or primary caregiver. Secure premises shall be locked or partitioned off to prevent access by children, visitors, casual passersby, vandals or anyone not licensed and authorized to possess medical marijuana.

(10) The cultivation, production or possession of marijuana plants in a residential structure pursuant to this Article is and shall be deemed consent by the primary caregiver or patients, upon reasonable notice, for the City to inspect the premises to assure compliance with the provisions of this Article. (Ord. 2013-5 §1; Ord. 2018-20 §18)

Secs. 18-303—18-310. Reserved.

ARTICLE X

Growing of Marijuana in Residential Structures for Personal Use

Sec. 18-311. Purpose.

This Article is intended to apply to the growing of marijuana in residential structures for personal use to the extent authorized by Article XVIII, Section 16(3)(b) of the Colorado Constitution. (Ord. 2013-4 §1)

Sec. 18-312. General provisions.

Any person, for purposes of this Article and consistent with Article XVIII, Section 16(3)(b) of the Colorado Constitution, who is twenty-one (21) years of age or older and is cultivating marijuana plants for his or her own use may possess, grow, process or transport no more than six (6) marijuana plants, with three (3) or fewer being mature, subject to the requirements that follow.

(1) Such possessing, growing, processing or transporting of marijuana plants for personal use must be in full compliance with all applicable provisions of Article XVIII, Section 16 of the Colorado Constitution.
(2) Such marijuana plants are possessed, grown or processed within the primary residence of the person possessing, growing or processing the marijuana plants for personal use, as defined by Paragraph (8) below.

(3) The possession, growing and processing of such marijuana plants must not be perceptible from the exterior of the primary residence, including but not limited to:

a. Common visual observation, including any form of signage;

b. Unusual odors, smells, fragrances or other olfactory stimulus;

c. Light pollution, glare or brightness that disturbs the repose of another; and

d. Undue vehicular or foot traffic, including excess parking within the residential zone.

(4) Such marijuana plants shall not be grown or processed in the common areas of a multi-family or attached residential development.

(5) Such cultivation, production, growing and processing of marijuana plants shall be limited to the following space limitations within a primary residence:

a. Within a single-family dwelling unit (Group R-3 as defined by the International Building Code): a secure, defined, contiguous one-hundred-fifty-square-foot area within the primary residence of the person possessing, growing or processing the marijuana plants for personal use.

b. Within a multi-family dwelling unit (Group R-2 as defined by the International Building Code): a secure, defined, contiguous one-hundred-square-foot area within the primary residence of the person possessing, growing or processing the marijuana plants for personal use.

c. Such possession, growing and processing of marijuana plants shall not occur in any accessory structure.

(6) Such possession, growing and processing of marijuana plants shall meet the requirements of all adopted City building and life/safety codes, as the same may be amended from time to time.

(7) Such possession, growing and processing of marijuana plants shall meet the requirements of all adopted water and sewer regulations promulgated by the City.

(8) For purposes of this Article, primary residence means the place that a person, by custom and practice, makes his or her principal domicile and address and to which the person intends to return following any temporary absence, such as vacation. Residence is evidenced by actual daily physical presence, use and occupancy of the primary residence and the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of and partaking of meals, regular mail delivery, vehicle and voter registration or credit, water and utility billing. A person shall have only one (1) primary residence. A primary residence shall not include accessory buildings.

(9) For purposes of this Article, a secure area means an area within the primary residence accessible only to the person possessing, growing or processing the marijuana plants for personal use. Secure premises shall be locked or partitioned off to prevent access by children, visitors, casual passersby, vandals or anyone not licensed and authorized to possess marijuana.
(10) The possession, growing and processing of marijuana plants in a residential structure pursuant to this Article is and shall be deemed consent by the person possessing, growing or processing the marijuana plants for personal use, upon reasonable notice, for the City to inspect the premises to assure compliance with the provisions of this Article. (Ord. 2013-4 §1)

Secs. 18-313—18-320. Reserved.
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Checklist of Up-to-Date Pages

(This checklist will be updated with the printing of each Supplement)

From our experience in publishing Looseleaf Supplements on a page-for-page substitution basis, it has become evident that through usage and supplementation many pages can be inserted and removed in error.

The following listing is included in this Code as a ready guide for the user to determine whether the Code volume properly reflects the latest printing of each page.

In the first column all page numbers are listed in sequence. The second column reflects the latest printing of the pages as they should appear in an up-to-date volume. The letters "OC" indicate the pages have not been reprinted in the Supplement Service and appear as published for the original Code. When a page has been reprinted or printed in the Supplement Service, this column reflects the identification number or Supplement Number printed on the bottom of the page.

In addition to assisting existing holders of the Code, this list may be used in compiling an up-to-date copy from the original Code and subsequent Supplements.

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